

harm offender reintegration community safety human rights dignity healing restitution reparation meeting the needs of victims offenders meeting their obligations repairing

PRACTICE STANDARDS FOR RESTORATIVE JUSTICE

A Practitioner's Toolkit

harm offender reintegration community safety human rights dignity healing restitution reparation meeting the needs of victims offenders meeting their obligations repairing

PRACTICE STANDARDS FOR RESTORATIVE JUSTICE

Published in 2007 by the Restorative Justice Initiative,
2nd floor, Van der Stel Building, 179 Pretorius Street, Pretoria
www.rjc.co.za

ISBN: 978-1-920051-85-3

Produced by Compress www.compress.co.za

Contents

Introduction	1
Overview of the Toolkit	2
The Values and Principles of Restorative Justice	6
PART 1	
Practice Standards for Restorative Justice Programmes, Values and Principles, Measures and Practices	9
The Referral Phase	10
The Preparation Phase	16
The Restorative Justice Encounter	20
The Post-Encounter Phase	30
PART 2 (Report)	
Project to Develop Practice Standards for Restorative Justice that relate to the Criminal Justice System	37
Introduction	38
Methodology	38
Developing Practice Standards for Restorative Justice Programmes	39
Identifying Values, Principles and Developing Standards for Restorative Justice Practice	41
Recommendations for the Way Forward	44
References Consulted	45
Government Departments and Organisations Represented at the Consultative Workshops	47
PART 3	
Practice Standards and Measurable Outcomes Checklist for Practitioners Implementing Restorative Justice Programmes	49
The Referral Phase	50
The Preparation Phase	51
The Restorative Justice Encounter	52
The Post-Encounter Phase	56
PART 4	
Measures for Evaluation for Organisations Implementing Evaluations of their Restorative Justice Programmes	59
The Referral Phase	60
The Preparation Phase	61
The Restorative Justice Encounter	63
The Post-Encounter Phase	67

Introduction

Practice Standards for Restorative Justice: A Practitioner's Toolkit

– Cheryl Frank and Ann Skelton, September 2007

1 Overview of the Toolkit

1.1 Introduction

The development of standards for practice is motivated by an interest in ensuring that services are of a high quality. As practitioners conduct their work in the field of restorative justice, they may ask themselves a range of questions: Is my programme achieving its “restorative” objectives? Does my programme uphold the human rights of participants? Do victims and offenders obtain satisfaction from my programme? This Toolkit aims to assist practitioners and those that seek to regulate the quality of restorative justice practice with the tools to answer these and other questions relating to the quality of practice.

This Toolkit presents a set of “Practice Standards for Restorative Justice”, and consists of a set of tools to guide their usage. The intended purpose of these standards is to guide the implementation of restorative justice programmes and processes linked to the criminal justice system. The standards presented here were developed from a review of literature in the field of restorative justice, and consultations with stakeholders in this field. They are specifically derived from a range of restorative justice values and principles, drawn from the literature, references to which are included in Part 3 below.

The project to develop these practice standards for restorative justice was commissioned by the Restorative Justice Initiative (RJI) with funding support from the Royal Danish Embassy. The brief was to develop a set of standards for restorative justice practice in South Africa, through a process of research and consultation. The researchers commissioned for the task reviewed international and local literature to develop a draft set of standards, and then consulted with key government and civil society role-players, as well as international experts before the standards were finalised. A full report on this process is presented in Part 2.

These standards are built around two central considerations: (1) to ensure that human rights standards are upheld within restorative justice processes, and (2) to ensure that programmes and processes are indeed restorative. The practice standards presented here relate to both issues, and emerge from the restorative justice values and principles that have been drawn from the literature on restorative justice. In order to specifically identify the programmes or processes to which these standards would be applicable, a definition of restorative justice had to be selected. While many programmes and processes identify themselves as operating within a restorative justice paradigm or as undertaking restorative justice, for this exercise Zehr’s definition of restorative justice below was selected as being generally descriptive of the interventions to which these standards would apply.

Restorative Justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.²

1.2 The Purpose of the “Practice Standards for Restorative Justice”

The establishment of standards is usually motivated by the need to secure a specific level of quality in relation to service delivery. These practice standards seek to ensure that restorative

2. Zehr, H. 2002. *The Little Book of Restorative Justice*. Good Books. Intercourse.

justice programmes and processes do two specific things: (1) that they uphold human rights standards, and (2) that they maintain integrity of restorative justice values and principles.

1.3 Who should use this Toolkit?

This Toolkit is intended specifically for practitioners that implement restorative justice programmes and processes aligned with the criminal justice system. Therefore, these standards would specifically apply to: restorative justice interventions relating to diversion from the criminal justice system; restorative justice programmes and processes that relate to sentencing; and programmes and processes that take place in the context of correctional institutions, parole and reintegration.

These standards were not developed with the aim of regulating the wide range of conflict and dispute resolution processes, as there are significant differences between those processes that are intended to operate within in a restorative justice paradigm and those intended as alternate dispute resolution mechanisms. It should be noted therefore that these standards may not apply to general alternate dispute resolution practices such as mediation, or traditional justice practices. However, it is proposed that these standards may be modified to offer a set of standards that is applicable to these processes.

The standards were developed to apply to any restorative justice programme or process that relates to the criminal justice system. Here the words, “programme or process” are defined in their broadest form and include processes where, for example, there may not be a face-to-face encounter between the victim and offender; where someone else may represent the victim, etc. The standards are however, specific to the values, principles and objectives of restorative justice.

1.4 How the Toolkit and Practice Standards Should be Used

At this stage, the intention is that these practice standards should be used for the purposes of self-regulation by organisations and others that run restorative justice processes and programmes. In the future, it is hoped that they may be endorsed by different government departments and used to regulate the quality of the restorative justice programmes that are utilised by these departments.

For the purposes of self-regulation, an organisation or person that provides a restorative justice programme or process may use these practice standards to guide each of the restorative justice interventions that it undertakes, as well as for evaluating its practice on a regular basis. This Toolkit provides tools to guide both these processes.

At the outset, it should be noted that standards differ from values and principles in that they are intended to be measurable. In developing these practice standards, a balance was sought between measurability and utility. Therefore, the standards are written to enable practice to be measured, while also ensuring that this does not become too onerous a task for those that must undertake the measurement.

These standards have been developed as ‘minimum standards’, and seek to regulate only at a level to ensure that human rights standards are upheld and that programmes and processes maintain the integrity of their ‘restorative’ intentions.

It should be noted that, in the context of diversion programmes, these standards are complementary to the minimum standards that have been developed for diversion programmes³, and in these cases, both sets of standards should be utilised.

It has already been noted that these standards are intended to be applicable to a wide range of restorative justice programmes and processes, including those that may not involve a face-to-face encounter between the offender and victim. The standards have been written, however, specifically to manage some of the risks that may occur in face-to-face encounters. Therefore, practitioners that are implementing programmes and processes that do not involve face-to-face encounters may not need to use all the standards, and will have to modify this list to adapt it to their needs. This will primarily relate to the removal of those standards that relate to face-to-face encounters.

This Toolkit consists of several parts. These are intended to assist practitioners to undertake different aspects of their work in relation to restorative justice.

Part 1: Full Practice Standards, including Measures and Discussion of Practice Issues

- This part of the Toolkit consists of the full set of practice standards. This is prefaced by the restorative justice values and principles upon which the standards have been based. These values and principles are discussed in more detail in the report presented in **Part 2**.
- The practice standards are divided into four sections, relating to the four general phases of restorative justice processes i.e. the Referral Phase, the Preparation Phase, the Restorative Justice Encounter, and the Post-Encounter Phase.
- Each standard is presented in the following categories:
 - **A standard statement:** this states the actual standard in full
 - **Values and principles:** this states the restorative justice values and principles to which that standard relates. Here, a link is also made to the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.⁴ This seeks to provide a constant reminder that practice needs to uphold these values and principles.
 - **Measurable outcomes checklist:** this is intended to be used by practitioners as the restorative justice programme or process is being implemented. It will allow the practitioner to ensure that each aspect of the restorative justice process has been adequately completed. This checklist is intended to guide the daily practice of practitioners and is completed by the practitioner as the different phases of the restorative justice process are worked through. Here, the practitioner within an organisation will be able to complete the checklist as s/he works, but may need to obtain information from other sources (e.g. referring persons such as prosecutors) in some cases.
 - **Measures that may be applied for evaluation purposes:** these are intended to be used by an organisation to evaluate its practice in relation to restorative justice programmes over the longer term. An evaluation may be conducted once per year, and could involve the selection of a sample of restorative justice cases to be analysed and evaluated. An organisation may apply these measures to provide information as to the general effectiveness of its restorative justice interventions. These measures are

3. Department of Social Development. 2007. Minimum Norms and Standards on Diversion. Pretoria: Department of Social Development.

4. United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. ECOSOC Resolution 2000/14.

different from the ‘measurable outcomes checklist’ above in that they seek to obtain information from those that have utilised the restorative justice programme (e.g. victims and offenders), with a view to understanding whether standards were upheld in the overall implementation.

- **Practice issues:** a discussion is provided at the end of each standard and highlights some of the central practice issues relating to that standard. This specifically aims to provide a rationale for the standard and consider its applicability to the victim and offender. It should be noted that while the basic minimum requirements for restorative justice practice are contained in the standards themselves, this section also notes aspects over and above basic considerations. It is proposed that this section be used in the training of restorative justice practitioners.
- It should be noted that Part 1 of the Toolkit is intended to provide a full logic of the standards, values and principles, measures and practice issues. Practitioners may treat Parts 1 and 2 as contextual information, but will find more practical application in Parts 3 and 4 of the Toolkit, which have been developed for the purposes of guiding aspects of practice and programme management.

Part 2: Report on the Project to Develop Practice Standards for Restorative Justice Programmes relating to the Criminal Justice System

- Part 2 provides a report on the project to develop practice standards for restorative justice. It provides background information on how the project was conducted and how the standards were developed.
- This specifically notes the sources from which the restorative justice values and principles were extracted and articulates the relationship between values, principles and standards.
- It is recommended that this document may also be used for training purposes.

Part 3: The Practice Standards and Measurable Outcomes Checklist

- Part 3 (denoted by blue pages) is intended for practitioners to use each time that they undertake a restorative justice programme or process. This document contains the practice standards together with the measurable outcomes checklist. As each step and phase of the restorative justice process is completed, practitioners can assess whether they have completed all the necessary activities to ensure that their activities ensure human rights standards, and that their activities are indeed restorative in nature.
- This document may be photocopied and included as one part of each case file, and form part of an organisation’s records in relation to that case. This will allow for practitioners and their managers to ensure that each intervention has covered all the necessary areas.

Part 4: Measures to be used for Evaluation Purposes

- Part 4 of the Toolkit (denoted by the blue pages) is intended to be used when an organisation wishes to evaluate its work relating to its restorative justice interventions. This tool includes each of the practice standards, and provides guidelines on how each of these may be measured. As will be noted from the practice standards, Standard 30 states that “restorative justice programmes have the duty to assess the extent to which both victims and offenders have been satisfied by the process.”, and this part of the Toolkit will assist organisations to meet this obligation as part of the evaluation process.
- It is anticipated that evaluations may be undertaken on a periodic basis (e.g. once per year) and that organisations can do this by drawing a sample of cases and applying these

measures to those cases. Where an external evaluator is contracted to undertake an evaluation, this tool may be provided to the evaluator to guide the process, or integrated into their Terms of Reference.

In summary, the different parts of the Toolkit are intended to be used as follows:

Section of Toolkit	By Whom	For What
Part 3	Practitioners that conduct restorative justice programmes or processes	To guide the implementation of each restorative justice programme or process
Part 4	Organisations that implement restorative justice programmes	To evaluate the organisation's performance in relation to the implementation of restorative justice programmes.
Part 1 Part 2 Part 3	Trainers of restorative justice practitioners	To train practitioners on how to run restorative justice programmes and processes.

1.5 Terminology

- **Restorative justice programme or process** is used in these standards to refer to any programme or process that adheres to the definition, values and principles of restorative justice, as articulated in this document.
- For the sake of consistency “offender” is used throughout, even where the person has not yet admitted guilt and should more properly be referred to as a “suspect”.
- **Prima facie** means that on the face of it, there is sufficient evidence to prosecute the matter.
- **Diversion** is the channelling of cases away from the formal court processes at the pre-trial stage, through a referral to a programme or process that must be successfully completed
- **Informed consent** means that the person has had all the options explained to him/her before s/he makes a decision to consent

2 The Values and Principles of Restorative Justice

1. Restorative justice processes should be in keeping with the rule of law, human rights principles and the rights articulated in the South African Constitution.
2. Restorative justice must promote the dignity of victims and offenders, and there should be no domination or discrimination.
3. All parties should be provided with complete information as to the purpose of the process, their rights within the process and the possible outcomes of the process.
4. All restorative justice processes should involve careful preparation of the participants, including legal representatives.
5. Parties should clearly understand that they may withdraw from the process at any time.
6. Parties should be given a reasonable amount of time to consider their options, when a restorative justice option is proposed.
7. Referral to restorative justice processes should be possible at any stage of the criminal justice system, with particular emphasis on pre-trial diversion, plea and sentence agreements, pre-sentence process, as part of the sentence, and part of the reintegration process, including parole.

The Values and Principles of Restorative Justice

8. Participation in restorative justice processes should be voluntary for all parties.
9. The parties should not be coerced into any specific agreement.
10. Restorative justice processes should provide all parties with equal opportunities for participation.
11. Restorative justice processes should be balanced and fair.
12. Restorative justice processes should generally be confidential. Parties may make an informed decision, by consensus, to dispense with confidentiality.
13. Victims and offenders should be allowed to bring support persons to the encounter provided that this does not compromise the rights and safety of any other party.
14. Victims and offenders should be allowed access to legal advice at any stage of the proceedings.
15. The participation of children should be contingent on permission from the parent/guardian as well as his/her presence, or the presence of another designated adult with the sole responsibility and authority to protect the rights and interests of the child.
16. When dealing with a child, care should be taken to ensure that s/he understands the process and can participate effectively.
17. Restorative justice processes should promote healing and restitution.
18. The provisions of restorative justice agreements should not be disproportionate to the harm caused.
19. Restorative justice processes should aim to prevent future offending.
20. Restorative justice programmes should respond to harms, needs and obligations.
21. Restorative justice processes should create space for remorse, the expression of shame, apology, forgiveness, mercy and compassion but should not force these responses to occur.
22. Restorative justice programmes need to ensure that offenders are, as far as possible, in a position to meet the obligations created by the offence.
23. Restorative justice processes should, as far as possible, be culturally appropriate to the parties involved.
24. All those who are responsible for the facilitation of restorative justice processes should be adequately trained or experienced.
25. Restorative justice programmes should provide a trained interpreter where this is required.
26. Restorative justice programmes should be designed in consultation with victims and offenders.
27. The need for public safety should be taken into consideration in terms of restorative justice processes and outcomes.
28. Restorative justice programmes should have clear aims that are well publicised.
29. Restorative justice programmes should provide a basis by which success may be measured.
30. Restorative justice programmes should be monitored (through internal processes) and evaluated (through independent research) to promote continuous improvement.
31. Restorative justice programmes should have published codes of practice and standards.
32. Restorative justice programmes should take measures to ensure the safety of participants.
33. Restorative justice programmes and processes should establish and maintain effective complaints mechanisms.
34. Restorative justice programme should have documented procedures for the management of disclosures relating to other offences.

Standards for Practice Standards for Practice
Programmes, Restorative Justice Programmes, Pra
es, Values and Principles, Values and
and Practice Measures and Practice Meas
Issues

PART 1

Practice Standards for Restorative Justice
Programmes, Values and Principles,
Measures and Practice Issues

The Referral Phase

Standard No. 1

When a restorative justice programme or process is being considered for a diversion or plea and sentence agreement, the prosecutor must be satisfied that the case against the offender is a prima facie case.

Principles and values to which standard is linked:

Fairness, due process.

UN Basic Principle 7.

Measurable outcomes:

	Yes	No
Has the prosecutor confirmed that there is a prima facie case against the offender?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The prosecutor confirms that s/he considered whether there was a prima facie case by relying on statements in the docket and weighing up the evidence.

Practice issues:

<p>If the case against the suspect has poor prospects for a successful prosecution the prosecutor should not be tempted to use diversion where the case should rather be withdrawn due to a lack of evidence. The prosecutor will rely on the statements of the complainant and witnesses in weighing up the evidence. When being offered the alternative to be referred to a restorative justice process, the offender must understand clearly what s/he is charged</p>	<p>with and be told in summary what evidence there is against him/her. Special care must be taken when dealing with a child offender, to ensure that the child really understands the charge and consequences, and s/he must be assisted by an adult when making a decision. If the offender is legally represented, the legal representative should consider whether there is a prima facie case and should discuss options with the prosecutor accordingly.</p>
--	---

Standard No. 2

If restorative justice is to be used as a diversion or plea and sentence agreement, participation in a restorative justice process or programme by an offender must be contingent on that person having acknowledged responsibility for the offence.

Principles and values to which standard is linked:

Accountability, fairness, due process.

UN Basic Principle 8.

Measurable outcomes:

	Yes	No
Has the offender acknowledged responsibility for the offence?	<input type="checkbox"/>	<input type="checkbox"/>
Did the prosecutor consider the consistency between the offender's version and the victims/witnesses versions?	<input type="checkbox"/>	<input type="checkbox"/>
Did the offender have sufficient information to make an informed choice? Was s/he:		
Informed about the charge?	<input type="checkbox"/>	<input type="checkbox"/>
Informed of the evidence?	<input type="checkbox"/>	<input type="checkbox"/>
Informed of his/her rights?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The prosecutor confirms s/he explained the rights of the offender to him/her in language that the offender could understand
- The prosecutor confirms that the offender was given a summary of the evidence against him/her.
- The prosecutor confirms that the offender made an informed choice, which was not brought about by undue influence from any person.
- The prosecutor confirms that the offender was told what the charge was in language s/he could understand.
- The prosecutor confirms that s/he considered whether the acknowledgement of responsibility was reasonably consistent with the events described by victims and witnesses.
- The offender confirms that his/her rights were explained in language s/he could understand.
- The offender confirms that s/he made an informed choice which was not unduly influenced by any person.
- The offender confirms that s/he was informed about the charge together with a summary of evidence, and s/he was therefore able to make an informed choice.

Practice issues:

Restorative justice processes are not intended to be used for determining the guilt or innocence of a person. It is therefore required that if restorative justice options are to be used as a diversion or alternative to a trial, then the option must be prefaced on an acknowledgement of responsibility. If the restorative justice option is to be used as a diversion, it is not necessary for the acknowledgment to fully match the elements of the charge, and some flexibility may be applied. It is common for the offender to admit less at the outset than s/he does once the restorative justice process gets underway. If the restorative justice option is being used as part of a plea and sentence agreement, however, the plea must match the charge. The prosecutor will rely on the statement of the complainant and other witnesses when considering whether the acknowledgment of responsibility is reasonably consistent with the events as described by the victim and witnesses. When being offered the option of a restorative justice process as a diversion or a plea and sentence agreement the offender should have his/her rights explained,

such as the right to be presumed innocent until proven guilty and the right to remain silent. The restorative justice process should also be explained fully. Once the offender is fully informed, only then can s/he make a proper choice to opt for the restorative justice process. The offender should never be placed under duress whilst considering his/her options. If the accused is legally represented, the legal representative will play a crucial role in explaining rights and evaluating options. An offender who is a child will require especially careful assistance to understand and evaluate the options, and care must be taken that s/he does not come under undue pressure from parents or other adults (including professionals) to opt for the restorative justice programme or process. A child offender must always be assisted by a parent or suitable adult. People with intellectual disabilities or developmental delays may also fail to grasp what the process is about. In such cases, the matter should not proceed, and in all likelihood such persons will also lack the capacity to be tried in the formal system.

Standard No. 3

The decision to refer a matter to a restorative justice process should not be based on the seriousness of the offence alone, but rather on a review of all factors in the case including offender responsiveness and readiness and the potential benefits to the victim.

Principles and values to which standard is linked:

Victim-centredness.
UN Basic Principle 21.

Measurable outcomes:

	Yes	No
Has an assessment of the offender been undertaken?	<input type="checkbox"/>	<input type="checkbox"/>
Has the prosecutor or presiding officer considered the full range of factors in deciding to refer the matter including:		
The nature of the offence?	<input type="checkbox"/>	<input type="checkbox"/>
The potential benefits to the victim?	<input type="checkbox"/>	<input type="checkbox"/>
The readiness and responsiveness of the offender?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The probation officer or other suitably experienced person confirms that an assessment of the offender was undertaken to determine whether s/he is a suitable candidate for the restorative justice process.
- The person referring the case confirms that s/he considered at least the following when making the referral: the potential benefits to the victim, the nature of the offence and the readiness and responsiveness of the offender, based on an assessment report.

Practice issues:

Some matters are more suitable for restorative justice processes than others. However, the nature or seriousness of the crime should not automatically cause a case to be excluded. The tendency to apply restorative justice only in less serious offences should be re-examined, and constant efforts should be made to bring a broader range of cases within the ambit of restorative justice. This is based on the principle of victim-centredness. The victims of more serious crimes have needs that could be met through their participation in a restorative justice programme. Excluding serious offences effectively excludes these victims from the benefits of restorative justice. Thus, where the offence is a serious one, and the victim desires a restorative justice solution, this should be considered. Even where diversion is considered inappropriate, plea and sentence agreements can be considered, or restorative justice can be included as part of the sentencing process or the sentence itself. An assessment of the offender by a probation officer or other suitably qualified or experienced person is the basis on which to make a decision related to the suitability and readiness of an offender for referral to a restorative justice programme or process.

Standard No. 4

Where the restorative justice process involves a face-to-face encounter with the victim, the victim's informed consent must be sought prior to the option being offered to the offender.

Principles and values to which standard is linked:

Victim-centrality, voluntariness.
UN Basic Principle 7.

Measurable outcomes:	Yes	No
Is the prosecutor/presiding officer satisfied that the victim is willing to participate in a face-to-face encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Was the victim consulted about participation in the restorative justice programme before offering the option to the offender?	<input type="checkbox"/>	<input type="checkbox"/>
Were the victim's rights explained in a language that s/he could understand?	<input type="checkbox"/>	<input type="checkbox"/>
Were the processes and possible outcomes of the process explained to the victim?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The victim confirms that s/he was approached by a suitably experienced, trained or qualified person prior to the offender being given the option of a restorative justice process involving a face-to-face encounter.
- The victim confirms that his/her rights were explained to him/her in a language s/he understood
- The victim confirms that the restorative justice process and the possible outcomes were also explained.
- The victim confirms that s/he consented to the restorative justice process proceeding.

Practice issues:

<p>Restorative justice processes are most effective where the parties are all willing participants. Restorative justice practice should be victim-centred. A victim should never be required to agree or be placed under duress to agree to participate in a restorative justice process. It is necessary that a person with the requisite knowledge and experience should explain the key principles of restorative justice and explain the steps of the restorative justice process, so that the victim can understand what is likely to happen and make an informed decision.</p>	<p>Sometimes it might be necessary to give the victim some time to consider his or her options. The victim might agree to the restorative justice process proceeding, but decide to be represented there by family members, friends or a victim support person. The offender may be informed about the possibility of a restorative justice process prior to the victim's consent, but where the restorative justice process involves a face-to-face encounter with the victim, the offender must understand that no undertaking can be given until the victim has consented.</p>
--	---

Standard No. 5

Participation in or information emanating from a restorative justice programme or process shall not be used as evidence in any subsequent legal proceedings in connection with the same or a related offence.

Principles and values to which standard is linked:

Fairness, due process.
UN Basic Principle 8.

Measurable outcomes:	Yes	No
Has the person referring the matter informed the offender that agreement to participate cannot be used as evidence of admission of guilt in subsequent legal proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
Has the person referring the matter informed the victim that agreement to participate cannot be used as evidence of admission of guilt in subsequent legal proceedings?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The offender confirms that it was explained to him/her that participation in a restorative justice process does not prejudice the presumption of innocence, and cannot be used as evidence of admission of guilt in any subsequent legal proceedings in connection with the same offence.
- The victim confirms that it was explained to him/her that if the restorative justice process fails s/he may have to testify at a future trial.

Practice issues:

Sometimes restorative justice processes fail due to an inability of the parties to reach agreement, or because the offender does not fulfil the terms of the agreement. In these situations, an accused person can find him/herself being brought back to court to face charges. If so, the acknowledgements made when selecting the restorative justice option or during the course of a restorative justice process may not be used against the offender in any subsequent legal proceedings. The victim may be called to testify in a criminal and/or civil court if the restorative justice process fails. This should be explained to the victim prior to him/her agreeing to participate in a restorative justice process. Admissions made in one court are not automatically admissible in another court. This standard should be explained to the accused person prior to him/her making a decision to participate in a restorative justice process.

Because of the focus on truth-telling in a restorative justice process, information about other offences (both past and planned) sometimes comes to light. Each restorative justice programme should have a predetermined policy about how this should be handled, and this should make specific provision that any information about crimes that

are being planned should be reported to the police. This policy should be communicated to those participating in programmes and processes, as well as to the criminal justice agencies that are making referrals. In the context of a restorative justice encounter, if a disclosure of a minor offence is made, it is usually advisable to continue with the process. If the offence is a serious one, particularly a crime of violence, it might be necessary to warn the person making the disclosure of the consequences thereof and in some circumstances to stop the conference and allow the offender to obtain legal advice relating to the disclosures. These disclosures are more likely at the post-sentence stage, where the offender has less to lose by sharing this information. If the information disclosed pertains to a crime that is planned but not yet committed, the facilitator must warn the person making the disclosure and the offender (if it not the offender who discloses) that such information will be reported to the police. At the outset of the restorative justice process the consequences of such disclosures should be explained (see Standards 7 and 11). It is also advisable to have a pamphlet that can be given to the participants before proceedings begin, that includes the details relating to this and other matters.

Standard No. 6

Any power imbalances, cultural differences and/or safety issues will be taken into account in the decision to refer a case to a restorative justice process.

Principles and values to which standard is linked:

Dignity, respect, fairness, equality.

UN Basic Principle 9.

Measurable outcomes:

Have power imbalances been considered?

Yes

No

Have safety issues been considered?

Have language issues been considered?

Have cultural diversity issues been considered?

For evaluation purpose:

- It is confirmed by the person making a decision to refer the matter that s/he had taken into account power imbalances, cultural differences and/or safety issues relating to gender, race, age, economic disparities, etc.
- The person making the decision to refer should explain any plans or arrangements made to deal with above.

Practice issues:

The dignity and safety, both physical and psychological, of all the parties should be taken into account when deciding to refer a matter to a restorative justice process. It is important that a victim should not feel disempowered at the restorative justice process. Cases where special care must be taken are sexual offences and domestic violence. Restorative justice programmes that deal with these cases should be specially designed, and facilitated by persons with specific knowledge and experience in the field. In South Africa, issues such as race and culture must be given special consideration in order to ensure

that the victim is not further disempowered. However, power imbalance need not rule out a restorative justice process, as providing the victim with extra support and ensuring facilitation by a highly skilled or experienced person can ensure that the process is not disempowering in any way. The physical safety of the victim must be carefully considered. Child offenders may also suffer power imbalances when facing a room full of adults. This can be offset by ensuring that the child is well supported during the process. When dealing with an angry victim, the physical safety of an offender could also be at risk.

The Preparation Phase

Standard No. 7

The parties and their support persons must be thoroughly prepared for the restorative justice process, which includes the provision of information about their rights and responsibilities within the process.

Principles and values to which standard is linked:

Dignity, respect, safety, voluntariness, managing power imbalances.

UN Basic Principle 7.

Measurable outcomes:

	Yes	No
Has the restorative justice process been explained to the victim?	<input type="checkbox"/>	<input type="checkbox"/>
Has the victim been informed of his/her rights within the process relating to the following:		
To participate voluntarily?	<input type="checkbox"/>	<input type="checkbox"/>
To obtain legal advice?	<input type="checkbox"/>	<input type="checkbox"/>
Not to be pressured into agreements?	<input type="checkbox"/>	<input type="checkbox"/>
For the process not to be cruel, demeaning degrading or abusive?	<input type="checkbox"/>	<input type="checkbox"/>
The use of information emanating from the process?	<input type="checkbox"/>	<input type="checkbox"/>
The consequences of non-compliance with agreements?	<input type="checkbox"/>	<input type="checkbox"/>
How disclosures of other crimes during the process will be managed?	<input type="checkbox"/>	<input type="checkbox"/>
Has victim been informed about the agreement and what kinds of outcomes may not be agreed?	<input type="checkbox"/>	<input type="checkbox"/>
Have other concerns of the victim been elicited and addressed?	<input type="checkbox"/>	<input type="checkbox"/>
Has the restorative justice process been explained to the offender?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been informed of his/her rights within the process:		
To participate voluntarily?	<input type="checkbox"/>	<input type="checkbox"/>
To obtain legal advice?	<input type="checkbox"/>	<input type="checkbox"/>
Not to be pressured into agreements?	<input type="checkbox"/>	<input type="checkbox"/>
For the process not to be cruel, demeaning or degrading?	<input type="checkbox"/>	<input type="checkbox"/>
The use of information emanating from the process?	<input type="checkbox"/>	<input type="checkbox"/>
The consequences of non-compliance with agreements?	<input type="checkbox"/>	<input type="checkbox"/>
How disclosures of other crimes during the process will be managed?	<input type="checkbox"/>	<input type="checkbox"/>
Have other concerns of the offender been elicited and addressed?	<input type="checkbox"/>	<input type="checkbox"/>
Have relevant support people been informed about the process?	<input type="checkbox"/>	<input type="checkbox"/>
Have relevant support people been informed about the rights of victims and offenders in the process?	<input type="checkbox"/>	<input type="checkbox"/>
Have other concerns of support people been elicited and addressed?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The victim confirms that s/he was informed about what the process would entail, including information about the facilitator, the rules of the process, how agreements are reached, and the kind of measures that may and may not be included in such agreements.
- The victim confirms that s/he was informed of the following rights within the process:
 - To participate voluntarily
 - To obtain legal advice at any point in the proceedings
 - Not to be pressured into agreements
 - For the process not to be cruel, demeaning or degrading
 - The use of information emanating from the proceedings

- How disclosures of other crimes during the process will be managed
- The consequences of non-compliance with agreements
- The victim confirms that his/her other questions relating to the restorative justice process were elicited and addressed
- The offender confirms that s/he was informed about what the process would entail including information about the facilitator, the rules of the process, how agreements are reached, and the kind of measures that may and may not be included in such agreements.
- The offender confirms that s/he was informed of the following rights within the process:
 - To participate voluntarily
 - To obtain legal advice at any point in the proceedings
 - Not to be pressured into agreements
 - For the process not to be cruel, demeaning or degrading
 - The use of information emanating from the proceedings
 - How disclosures of other crimes during the process will be managed
 - The consequences of non-compliance with agreements
- The offender confirms that his/her other questions relating to the restorative justice process were elicited and addressed.
- Support persons confirm that they were informed about what the process would entail.
- Support persons confirm that she/he/they were informed of the rights of victims and offenders within the process.
- Support persons confirm that their other questions relating to the restorative justice process were elicited and addressed.

Practice issues:

It is important that parties are properly prepared for the restorative justice process to ensure that they know what to expect and how to behave. This phase also acts as a “checks and balances” exercise in relation to the referral process, as if parties were coerced at the referral stage it is likely to be revealed during the preparation process. The preparation phase may also reveal problems such as substantial disagreement as to the facts between the parties, in which case the matter may need to be referred back to the criminal justice system. Any power imbalances should be noted, and steps taken to redress the imbalance, for example by including extra support persons or the selection a particularly skilled facilitator to facilitate the process. Unreasonable expectations

need to be dealt with, particularly with regard to monetary compensation. The preparation of the victim must include the victim being informed fully of the process and the possible outcomes. There must be respect for the fact that victims sometimes need more time, and a balance must be found between the need for timeous outcomes in the criminal justice system, and allowing the victim sufficient time before having the encounter with the offender. The offender must understand the process and know what to expect. If the victim or the offender is a child his/her parent or guardian should be present during any preparation meetings. Any support people planning to attend must also be prepared.

Standard No. 8

The parties should be informed that they are permitted to withdraw from the process at any stage and opt instead for the case to proceed through the criminal justice process.

Principles and values to which standard is linked:

Voluntariness.

UN Basic Principle 7.

Measurable outcomes:

	Yes	No
Has the victim been informed that s/he may withdraw from the process at any stage?	<input type="checkbox"/>	<input type="checkbox"/>
Has the victim been informed of the implications of such a decision?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been informed that s/he may withdraw from the process at any stage?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been informed of the implications of such a decision?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The victim confirms that it was explained to him/her that s/he could withdraw at any stage and opt for the matter to proceed through the criminal justice process
- The victim confirms that s/he was informed of the implications of such a decision
- The offender confirms that it was explained to him/her that s/he could withdraw at any stage and opt to have the matter to proceed through the criminal justice process
- The offender confirms that s/he was informed of the implications of such a decision

Practice issues:

Successful restorative justice processes are dependent on both parties being willing to participate in the process. The preparation phase often alerts the parties to issues that they had not previously considered when they chose the restorative justice option. If any party expresses doubts that cannot be allayed through explanation, it should be explained to him/her that if s/he has a change of mind at any stage during the process, it is still possible to withdraw and opt instead for the case to go through the criminal justice system. During the preparation phase the victim may express doubts about going through with the restorative justice process. He or she may lose confidence about a face-to-face encounter, or may have other concerns. If the doubts persist after the process has been fully explained, it should be further explained to the victim that it is still possible for him/her to withdraw from the process and allow the matter to proceed through the criminal justice process.

The offender retains the right to opt for a trial. During the preparation phase it may emerge that the offender does not acknowledge responsibility for the offence, or that the dispute of facts will be too substantial to be managed at the restorative justice process. In such cases the matter should be referred back to the criminal justice process for plea and trial. Alternatively, the offender may feel overwhelmed by the idea of coming face-to-face with the victim. If careful preparation does not resolve this fear adequately, the offender may opt to go through the criminal justice process, provided that s/he has had the consequences of such a decision fully explained. Sometimes children are too young to understand the processes, and people with intellectual disabilities or developmental delays may also fail to grasp what the process is all about. In such cases, the matter should not proceed, and in all likelihood such persons will also lack the capacity to be tried in the formal system.

Standard No. 9

The restorative justice encounter should be arranged at a time and place acceptable to all parties.

Principles and values to which standard is linked:

Dignity, respect, safety, managing power imbalances.
UN Basic Principle 10.

Measurable outcomes:

	Yes	No
Has the victim been consulted regarding the time of the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Has the victim been consulted regarding the place of the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been consulted regarding the time of the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been consulted regarding the place of the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The victim confirms that s/he was consulted about the time and place of the restorative justice encounter
- The victim confirms that s/he was satisfied with the time and place
- The victim confirms that his/her needs for confidentiality and safety were met.
- The offender confirms that s/he was consulted about the time and place of the restorative justice encounter
- The offender confirms that s/he was satisfied with the time and place.

Practice issues:

An ideal venue is one that is neutral, protects confidentiality and allows all the participants to feel comfortable. It should be acceptable to all parties. The time should be suitable to all participants. This may sometimes mean carrying out the restorative justice process outside normal working or school hours. The victim's needs for confidentiality and safety must be considered above all. The offender also has a right to confidentiality and safety.

The Restorative Justice Encounter

Standard No. 10

At the start of the encounter the facilitator should explain the planned proceedings to all those present. This should include information about the purpose of the meeting and the role of the facilitator.

Principles and values to which standard is linked:

Dignity, respect, safety, voluntariness.

UN Basic Principle 7.

Measurable outcomes:

Did the facilitator begin by explaining the planned proceedings to all those present?

Yes No

Did this include:

The purpose of the meeting?

The role of the facilitator?

For evaluation purpose:

- Participants confirm that the planned proceedings were explained by the facilitator at the start of the restorative justice encounter.
- Participants confirm that the purpose of the meeting and the role of the facilitator were communicated.

Practice issues:

A direct restorative justice encounter is usually structured in some way, to ensure that specific issues are addressed. The encounter typically begins with an explanation to all those present of the process that will be followed and how outcomes will be reached. The Preparation Phase will already have provided the victim, the offender and some or all of the support persons with this information. The purpose of this reiteration is to establish the tone for the rest of the meeting, and ensure that all participants are aware of how the process will unfold. It is at this stage that the facilitator should reiterate his/her role in the encounter, and provide quite specific information about what s/he may and may not do within the process. At this stage, the facilitator may also wish to establish ground rules or expectations for the participants in the encounter. This may assist with ensuring that Standards 14 and 20 are met.

Standard No. 11

The rights of victims, offenders and others in relation to the restorative justice process should be explained to all those present. The specific rights that should be explained are:

- Victims and offenders are entitled to access legal advice at any stage of the proceedings
- Parties may withdraw from the process at any time
- The victim and offender should again be asked whether they have entered the proceedings voluntarily, and whether they understand the purpose of the process, and the possible outcomes of the process
- The victim is under no obligation to accept any offer of reparation from the offender
- The process should not be a cruel, demeaning or degrading experience for either party. This should apply to all aspects of the process including the agreements reached.
- Participation in or information emanating from a restorative justice process cannot be used in any subsequent legal proceedings
- How the disclosure of other offences would be handled

Principles and values to which standard is linked:

Fairness, due process, dignity, respect.

UN Basic Principles 7, 12.

Measurable outcomes:

Did the facilitator inform all participants of the following rights and principles:

	Yes	No
Victims and offenders are entitled to access legal advice at any stage of the proceedings	<input type="checkbox"/>	<input type="checkbox"/>
Parties may withdraw from the process at any time	<input type="checkbox"/>	<input type="checkbox"/>
The victim and offender should participate in the proceedings voluntarily	<input type="checkbox"/>	<input type="checkbox"/>
The victim is under no obligation to accept any offer of reparation from the offender	<input type="checkbox"/>	<input type="checkbox"/>
The process should not be a cruel, demeaning or degrading experience for either party	<input type="checkbox"/>	<input type="checkbox"/>
How the disclosure of other offences would be handled	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The participants confirm that the facilitator informed the meeting of the following rights and principles.
 - Victims and offenders are entitled to access legal advice at any stage of the proceedings
 - Parties may withdraw from the process at any time
 - The victim and offender should again be asked whether they have entered the proceedings voluntarily, and whether they understand the purpose of the process, and the possible outcomes of the process
 - The victim is under no obligation to accept any offer of reparation from the offender
 - The process should not be a cruel, demeaning or degrading experience for either party.
 - Participation in or information emanating from a restorative justice process cannot be used in any subsequent legal proceedings.
 - How the disclosure of other offences would be handled.

Practice issues:

As with the previous standard, this issue will have received attention in relation to all the parties present. The purpose of its reiteration in the introductory stages of the face to face encounter is to ensure that rights remain a central focus in the processes of the meeting, and that all participants are reminded of their specific rights within the process. This may enable them to seek to access these rights more readily, within the context of the process.

Standard No. 12

The nature and substance of possible outcomes and agreements (as an outcome of the restorative justice process) that may be reached should be explained to the participants. This should include:

- Agreements should be entered into voluntarily by all parties
- No party may be pressured into accepting an agreement or any part of an agreement
- No agreement may include requirements that are cruel, demeaning or degrading to either party
- Once an agreement has been reached and agreed to it is binding on the parties
- The consequences of non-compliance with agreements

Principles and values to which standard is linked:

Fairness, due process, dignity respect.

UN Basic Principle 12.

Measurable outcomes:	Yes	No
Did the facilitator explain the following central principles relating to agreements?		
Agreements should be entered into voluntarily by all parties	<input type="checkbox"/>	<input type="checkbox"/>
No party may be pressured into accepting an agreement or any part of an agreement	<input type="checkbox"/>	<input type="checkbox"/>
No agreement may include requirements that are cruel, demeaning or degrading to either party	<input type="checkbox"/>	<input type="checkbox"/>
Once an agreement has been reached and agreed to it is binding on the parties	<input type="checkbox"/>	<input type="checkbox"/>
The consequences of non-compliance with agreements	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The participants confirm that the facilitator explained the following central principles relating to agreements:
 - Agreements should be entered into voluntarily by both parties
 - No party may be pressured into accepting an agreement or any part of an agreement
 - No agreement may include requirements that are cruel, demeaning or degrading to either party
 - Once an agreement has been reached and agreed to it is binding on the parties
 - The consequences of non-compliance with agreements

Practice issues:

It is important, at the outset, that participants have realistic expectations related to both the processes and the outcomes of the restorative justice encounter. The Preparation Phase will have provided participants with this information already, and this standard serves to reinforce this. This standard is constructed in such a way that it specifically seeks to ensure that certain kinds of conditions are not included in agreements. This approach allow for participants to still be creative about what may be included in agreements. The placement of these restrictions is necessary to ensure that the restorative justice process remains true to the principles of restorative justice and that human rights standards are adhered to. The discussion of these restrictions also reinforces the rights and principles in Standard No.11.

Standard No. 13

Participants should be informed that the proceedings are confidential. Parties may make an informed decision, by consensus, to dispense with confidentiality.

Principles and values to which standard is linked:

Fairness, dignity, respect, due process.
UN Basic Principle 13.

Measurable outcomes:	Yes	No
Did the facilitator inform the meeting about the confidentiality of the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
Did the facilitator inform the meeting that confidentiality could be dispensed with if all parties agreed, and if all were fully aware of the consequences?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The participants confirm that the facilitator informed the meeting of the confidentiality of the proceedings
- The participants confirm that the facilitator informed the meeting that confidentiality could be dispensed with if all parties agreed, and if all were fully aware of the consequences.

Practice issues:

<p>Confidentiality is important to the proceedings in that it increases the potential for the parties to be open and honest. It promotes the openness of offenders to talking about the facts of the offence, as well as sharing their motivations and feelings. For the victim, confidentiality may also promote an increased confidence in the proceedings, and a willingness to share feelings and views that are intensely personal, and often difficult to express. However, in some cultures confidentiality in</p>	<p>such proceedings may seem at odds with the idea of communitarian participation. Although the general rule is that proceedings should be confidential, it is possible to depart from this if the participants make an informed choice to dispense with the requirement. For example, the parties may wish to tell the story of their restorative justice encounter to the media, in order to broaden understanding about restorative justice processes.</p>
---	---

Standard No. 14

The participants should be informed of the need to acknowledge and manage power imbalances that may result due to issues such as gender, race, age, economic disparities, etc. in the proceedings.

Principles and values to which standard is linked:

Fairness, dignity, respect, managing power imbalances
UN Basic Principle 9.

Measurable outcomes:

Did the facilitator inform the participants of the need to acknowledge and manage power imbalances that may exist?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- Participants confirm that the facilitator informed participants of the need to acknowledge and manage power imbalances that may exist due to issues such as gender, race, age, economic disparities, etc. in the proceedings.

Practice issues:

<p>A central concern noted in much of the theory of restorative justice is ensuring that power imbalances are managed in the context of the restorative justice encounter. Power imbalances may relate to a number of different factors (e.g. age, race, gender, economic disparities, etc.), but also have a contextual dimension (refer to the discussion</p>	<p>under Standard 6 above). The provision of this information at the outset is intended to inform the meeting that this is a factor for concern within the meeting, and note that the facilitator will take into account such factors and the dynamics that they may create and seek to ameliorate these within the context of the meeting.</p>
---	---

Standard No. 15

The facilitation of the process should provide all parties with opportunities for participation.

Principles and values to which standard is linked:

Fairness, dignity, respect, participation.

Measurable outcomes: Yes No
 Did the facilitator make efforts to enable the participation of those who wished to be heard?

For evaluation purpose:

- The victim confirms that s/he was given opportunities to participate in the proceedings.
- The offender confirms that s/he was given opportunities to participate in the proceedings.
- Other participants confirm that they were given opportunities to participate in the proceedings.
- Evaluation may also measure the extent to which participants were satisfied with their levels of participation.

Practice issues:

<p>As noted earlier, the success of restorative justice processes are significantly dependent on the willing and active participation of the parties. This participation needs to be enabled by facilitation that actively creates opportunities for all those who wish to, to participate. This standard is central not only to ensuring that victims and offenders feel respected and heard, but it will also promote ownership of discussions and decisions.</p>	<p>This, in turn, will support their commitment to the agreements made. Children participating in restorative justice processes may sometimes find it difficult to fully participate, and they need to be encouraged to do so. Facilitators may have to use techniques such as asking open questions (those that do not have “yes” or “no” replies). These could include asking questions starting with words such as “how” or “why”.</p>
---	---

Standard No. 16

The process should expressly acknowledge the harm caused to the victim.

Principles and values to which standard is linked:

Dignity, restoration, validation, victim-centredness.

Measurable outcomes: Yes No
 Did the facilitator ensure that the specific harm caused to the victim was acknowledged?

For evaluation purpose:

- The victim confirms that the harm caused to him/her was acknowledged.

Practice issues:

<p>One of the central requirements of a restorative justice process is seeking to repair the harm caused to the victim. Within the restorative justice process, this has three elements: the victim articulating the harm caused to him/her; the encounter/offender acknowledging the harm caused; and planning to make amends. The restorative justice process should actively seek to elicit information relating to the harm caused, in order that this may be expressed by the victim and understood by the offender. This is often</p>	<p>a very powerful process, where the essence of restorative justice is demonstrated. Victims may tell heartfelt and emotional stories which may impact on offenders in very real and profound ways. It is through these stories that empathy with the victim is built, and where offenders are motivated towards making amends. Such processes cannot be forced, but may emerge through the careful facilitation of the process. For the victim, the acknowledgement of the harm caused is often central to the process of healing.</p>
---	--

Standard No. 17

The process should recognise and enable the fulfilment of the needs of victims such as the need for the acknowledgement and vindication, the need for answers, and the need for compensation.

Principles and values to which standard is linked:

Victim-centredness, validation, dignity, respect.

Measurable outcomes:

Did the facilitator allow the opportunity for the victim to express his/her needs emerging from the offence?

Yes No

Did the facilitator seek out ways to respond to these needs?

For evaluation purpose:

- The victim confirms that s/he was allowed the opportunity to express his/her needs resulting from the offence.
- The victim confirms that the restorative justice process responded to some or all of the needs expressed.

Practice issues:

A central feature of restorative justice is that it recognises and responds to the needs of victims. Each person's experience of victimisation is unique and the set of needs that emerge from each crime is different for every victim. This requires that restorative justice encounters be facilitated to ensure that victims are afforded the opportunity to voice their specific needs. These may be of a very diverse nature and include material needs (e.g. medical costs), practical needs (e.g. the need for information); and emotional needs (e.g. the need for validation, the need to feel safe, and the need to understand why they were victimised). The restorative justice process must also seek to respond to these needs, which may be done within the encounter or within the agreements reached. It should be noted that it may not be possible to respond to all the needs expressed, but this too needs to be noted and acknowledged.

Standard No. 18

The process should respect the experiences and feelings of offenders.

Principles and values to which standard is linked:

Respect, dignity, human rights, participation.

Measurable outcomes:

Did the facilitator ensure that the feelings and experiences of offenders were heard and acknowledged?

Yes No

For evaluation purpose:

- The offender confirms that s/he was provided with the opportunity to express his/her feelings and experiences.
- The offender confirms that the facilitator made efforts to ensure that these were acknowledged within the process.

Practice issues:

<p>The focus that the process places on responding to the needs of victims can be marginalising to offenders. It is also true that offenders may come into such processes at a disadvantage because they are already recognised as “at fault” or “the problem”. This standard seeks to ensure that the feelings and experiences of the offender are equally</p>	<p>respected in the process. This kind of respect will ensure that the restorative justice process is indeed restorative to both parties and contributes to the offender’s commitment to reaching and fulfilling the agreement. Such respect for the offender may also open the door for the offender to make decisions about his/her future behaviour.</p>
---	---

Standard No. 19

Offenders should be afforded the opportunity to respond to the obligations created by the offence, including offering reparation.

Principles and values to which standard is linked:

Fairness, making amends, dignity.

Measurable outcomes:

Did the facilitator ensure that the offender had been provided with opportunities to respond to the obligations created by the offence?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The offender confirms that s/he was provided with opportunities to respond to the obligations created by the offence

Practice issues:

<p>Similar to the issue of acknowledging and responding to the needs of victims (see Standard 17 above), the restorative justice process is also centrally about enabling the offender to respond to the obligations that have been created by the offence. The process should allow the offender to respond to the needs and issues raised by the victim (and his/her supporters), in relation to making amends for the offence. A central consideration</p>	<p>here is that nothing relating to making amends may be forced on the offender. S/he needs to be provided with information and guidance, but allowed to decide for him/herself in this regard. Where the offender is a child, s/he will need usually need assistance from his/her family in providing for any amends that require financial input, but it is important to include actions or gestures that the child can perform by him/herself.</p>
---	---

Standard No. 20

The process should not be a cruel, demeaning or degrading experience for either party.

Principles and values to which standard is linked:

Dignity, respect.

Measurable outcomes:

Did the facilitator make efforts to ensure that the process was not cruel, demeaning or degrading to any party?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The victim confirms that the facilitator made every effort to ensure that the process was not cruel, demeaning or degrading to him/her or other persons
- The offender confirms that the facilitator made every effort to ensure that the process was not cruel, demeaning or degrading to him/her or other persons

Practice issues:

Restorative justice is firmly rooted in a human rights framework. This is supported by a set of general principles (see above) that seek to promote specific safeguards against the abuse of these rights. All the processes of restorative justice need to ensure that these rights and principles are made a reality for both the victim and the offender. In the context of the encounter, it is the role of the facilitator to guide the nature and processes of communication, as well the nature of the outcomes (the agreement). The facilitator therefore plays a crucial role in protecting the victim and offender from processes that may be experienced as cruel, demeaning or degrading. This often requires careful and skilled facilitation, as by their very nature, such processes are intended to encourage the expression of feelings. It requires a careful balance of allowing parties to share their views, but intervening and managing processes where these may be deemed cruel, demeaning or degrading to any party. This may require the establishment of ground rules or expectations at the start of the meeting. These may include agreements relating to how communication will take place, the use of language (e.g. that the parties should refrain from the use of obscene language), etc.

Standard No. 21

Agreements in restorative justice processes should be entered into voluntarily.

Principles and values to which standard is linked:

Voluntariness.

UN Basic Principle 7.

Measurable outcomes:

	Yes	No
Did the facilitator ensure that the victim entered into the agreement voluntarily, and stop efforts to coerce him/her into any agreement?	<input type="checkbox"/>	<input type="checkbox"/>
Did the facilitator ensure that the offender entered into the agreement voluntarily, and stop efforts to coerce him/her into any agreement?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The victim confirms that s/he entered into the agreement voluntarily
- The offender confirms that s/he entered into the agreement voluntarily

Practice issues:

The process of reaching agreements in the context of the restorative justice meeting usually involves some discussion and negotiation. This may create the potential for either party to be forced into an agreement that s/he may not be comfortable with. This standard is intended to ensure that neither party feels coerced into any agreement. As with the previous standard (No.20), there is a critical role to be played here by the facilitator, who should remain vigilant with regard to this issue, and take steps to reduce the potential of this happening.

Standard No. 22

Agreements should be reasonable and achievable.

Principles and values to which standard is linked:

Respect, dignity.

Measurable outcomes:

Did the facilitator ensure that the agreement is reasonable and achievable by checking this with the affected parties?

Yes No

Did the facilitator check that the relevant resources to enable fulfilment of the agreement were available in the community?

For evaluation purpose:

- The victim confirms that the requirements of him/her (if any) were reasonable and achievable.
- The offender confirms that the requirements of him/her were reasonable and achievable.
- There is independent confirmation that other community services required for the fulfilment of the agreement were available and accessible.

Practice issues:

The purpose of the restorative justice agreement is to establish a course of action that responds at least to the objectives of meeting the needs of victims and offender reintegration. This standard is intended to ensure that: (1) agreements reached are within the capabilities of the parties to fulfil, and (2) that they are realistic in terms

of the available resources. This may require some creativity on the part of the facilitator, as s/he needs to be knowledgeable about services and their availability. Children will need assistance to participate in the making of agreements, as they may be tempted to make agreements that can in reality not be fulfilled.

Standard No. 23

The nature of reparation should not be disproportionate to the harm caused.

Principles and values to which standard is linked:

Proportionality, fairness.

Measurable outcomes:

Did the facilitator ensure that the nature of reparation contained in the agreement is not disproportionate to the harm caused?

Yes No

For evaluation purpose:

- The offender confirms that the nature and duration of reparation contained in the agreement was not excessive in proportion to the harm caused.
- Support persons confirm that the nature and duration of reparation contained in the agreement was not excessive in proportion to the harm caused.

Practice issues:

This standard seeks to invest the restorative justice agreement with a sense of proportionality, and to ensure that agreements do not become retributive in nature. This is an attempt to create balance where there may be a very angry victim and supporters. A related issue is the need to ensure that the provisions of agreements are within the capacity of the offender to fulfil.

Standard No. 24

Restorative justice agreements should seek to provide a balance between meeting the needs of the victim and promoting offender reintegration.

Principles and values to which standard is linked:

Victim-centredness, offender reintegration.

Measurable outcomes:

	Yes	No
Did the facilitator provide guidance to ensure that the agreement was balanced between meeting the needs of the victim and promoting offender reintegration?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The victim confirms that the agreement provided a balance between meeting his/her needs and promoting offender reintegration.
- The offender confirms that the agreement provided a balance between meeting the needs of the victim and promoting his/her reintegration.
- An independent assessment of the agreement indicates that it included provisions relating to both meeting the needs of victims and promoting offender reintegration.

Practice issues:

This standard acknowledges that there are objectives, beyond meeting the needs of victims, which are recognised as important within restorative justice. These include the prevention of reoffending and the promotion of community safety. This standard also promotes the need to seek to a balance between these objectives.

The Post-Encounter Phase

Standard No. 25

The terms of agreement should be provided in writing. This should include: the names of the parties, the specific elements of the agreement, the time-frames, and a description of what will occur if there is a failure to comply.

Principles and values to which standard is linked:

Accountability, fairness.

Measurable outcomes:

	Yes	No
Was there a written agreement?	<input type="checkbox"/>	<input type="checkbox"/>
Did the agreement contain the names of the parties?	<input type="checkbox"/>	<input type="checkbox"/>
Did the agreement set out the specific elements of the agreement, with time frames?	<input type="checkbox"/>	<input type="checkbox"/>
Did the agreement clearly indicate what would occur if there was a failure to comply?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The facilitator confirms that a written agreement was drawn up immediately following the encounter.
- The written agreement is available for scrutiny that includes the names of the parties, the specific elements of the agreement, and related time-frames.
- The written agreement clearly sets out what will occur should there be a failure of compliance with the agreement.

Practice issues:

This standard requires that a record must be kept of the specific elements of the agreement. This is important, because without a record of the particulars agreed upon, there might later be disputes about certain aspects. It is important therefore that the written agreement is accurate and unambiguous. It should include the names of the parties. Contact details for the named parties should be recorded separately by the facilitator and kept by the programme, but need not be part of the agreement, as the parties may wish to keep contact information confidential. The specific aspects of the agreement that must be recorded include any undertakings by any of the parties, and the time frames by which certain undertakings must be delivered. If restitution of goods is required, the specifics and the dates must be included in the agreement. If compensation is to be paid, the monetary amount must be recorded, and the terms of the agreement such as whether it is to be paid in instalments, and by when. If any party is required to undertake community service the number of hours per week or month must be specified, as well as the place where it is to be served, and how it will be supervised. If any party is required to attend a programme or course at a specified centre, the specifics with regard to those arrangements must also be included. Finally, it is essential that the agreement should include an indication of what should happen if there is a failure to comply. More detail relating to this is included in Standard 29. It is recommended that organisations develop standard forms upon which agreements may be recorded, in order to ensure that all the above elements are included.

Standard No. 26

Restorative justice programmes need to provide both parties with the written terms of agreement as soon as possible, but not later than one week after the restorative justice encounter.

Principles and values to which standard is linked:

Victim-centredness, offender reintegration.

Measurable outcomes:

	Yes	No
Did the restorative justice programme provide the victim with a written copy of the agreement not later than 1 week after the encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Did the restorative justice programme provide the offender with a written copy of the agreement not later than 1 week after the encounter?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The victim confirms that s/he received a written copy of the agreement not later than 1 week after the encounter.
- The offender confirms that s/he received a written copy of the agreement not later than 1 week after the encounter.

Practice issues:

<p>Standards 25, 26, 27, 28 and 29 are intended to enable and support the implementation of the agreement. They seek to provide clear information to all parties about what is expected, what the consequences are, and establish processes for responding to non-compliance with agreements. The provision of the written agreement to the</p>	<p>victim and offender completes the processes of the restorative justice encounter, and together with Standards 27 and 28 below, seeks to provide information to enable the terms of the agreement to be carried out effectively. This standard seeks to continue the processes of ensuring participation and ownership of the restorative justice process.</p>
---	--

Standard No. 27

Both parties should be informed about the consequences of failing to comply with the conditions of the agreement.

Principles and values to which standard is linked:

Accountability, human rights.

Measurable outcomes:

	Yes	No
Did the restorative justice programme inform the offender of the consequences of the failure to comply with the conditions of the agreement?	<input type="checkbox"/>	<input type="checkbox"/>
Did the restorative justice programme inform the victim of the consequences of the failure to comply with the conditions of the agreement?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- The offender confirms that s/he was informed about the consequences of the failure to comply with the conditions of the agreement.
- The victim confirms that s/he was informed about the consequences of the failure to comply with the conditions of the agreement.

Practice issues:

<p>This standard, together with Standards 25, 26, 28 and 29 are intended to enable and support the implementation of the agreement. They seek to provide clear information to all parties</p>	<p>about what is expected, what the consequences are, and establish processes for responding to non-compliance with agreements.</p>
---	---

Standard No. 28

Restorative justice programmes must take steps to effectively monitor compliance with agreements.

Principles and values to which standard is linked:

Accountability.

Measurable outcomes:

Were steps taken to ensure that the agreement was complied with?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- What steps were taken to ensure that the agreement was complied with after the restorative justice encounter?

Practice issues:

<p>This standard, together with Standards 25, 26, 27 and 29 are intended to enable and support the implementation of the agreement. They seek to provide clear information to all parties about what is expected, what the consequences are, and establish processes for responding to non-compliance with agreements. Although Standard 22 seeks to ensure that agreements are reasonable and achievable, it is also true that parties may not follow through on agreements. It is essential</p>	<p>that restorative justice programmes facilitate and support the parties in fulfilling the agreements made in the process. The kind of activities that may be undertaken may be decided by each restorative justice programme. In some instances the parties themselves or their support persons may take responsibility to monitor compliance. However, this standard promotes that identifiable efforts should be made to follow up and monitor the fulfilment of agreements.</p>
---	--

Standard No. 29

All restorative justice programmes should have a documented procedure for responding to non-compliance with agreements, and provide information to victims and offenders about this procedure.

Principles and values to which standard is linked:

Accountability, fairness.

Measurable outcomes:

Does the restorative justice programme have a documented procedure for responding to non-compliance with agreements?	Yes	No
	<input type="checkbox"/>	<input type="checkbox"/>
Has the victim been informed of the procedure?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been informed of the procedure?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- There is evidence of a documented procedure for responding to non-compliance with agreements
- The victim confirms that s/he was informed of the procedure
- The offender confirms that s/he was informed of the procedure

Practice issues:

This standard, together with Standards 25, 26, 27 and 28 are intended to enable and support the implementation of the agreement. They seek to provide clear information to all parties about what is expected, what the consequences are, and establish processes for responding to non-compliance with agreements. This standard seeks to ensure fairness and consistency in responding to non-compliance. It also seeks to ensure that both the victim and the offender are aware of the procedures that will occur if there is non-compliance. Restorative justice programmes will differ in terms of how this is handled. However, the offender should be provided with an opportunity to explain non-compliance and to resolve the matter. In some instances there may be partial compliance, and negotiations may result in an acceptance of this as adequate by the victim, or more time for completion may be allowed. The consequences for non-compliance will be different depending on whether the referral was done at the pre-trial stage (where the consequence may be that the offender will have to plead guilty or proceed to trial) or the sentence stage, where if completion was a condition linked to a suspended sentence the offender will have to return to court and the suspended sentence may be put into operation.

Standard No. 30

Restorative justice programmes have the duty to assess the extent to which both victims and offenders have been satisfied by the process.

Principles and values to which standard is linked:

Programme effectiveness.

Measurable outcomes:

Was the satisfaction of the victim and offender with the restorative justice process assessed?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- Does the programme or organisation make regular efforts to assess the extent to which parties were satisfied with the process?
- Questions relating to “satisfaction” with the process may be added to several of the sections above.

Practice issues:

This standard is linked to the evaluation of the effectiveness or impact of the service, but relates specifically to the need to follow-up with all victims and offenders to understand their experience of the restorative justice process. This can provide valuable learning and offer very specific information as to how programmes may be changed or improved. Most importantly, such processes inform victims and offenders that their views and experiences matter, even after the restorative justice encounter.

Standard No. 31

Restorative justice programme have a duty to establish and administer mechanisms through which programme participants may complain about services.

Principles and values to which standard is linked:

Accountability.

Measurable outcomes:

Does the programme have a complaints mechanism?

Yes No

Have participants been informed about how it can be used?

For evaluation purpose:

- Does the programme have a functional complaints mechanism?
- Is there evidence of complaints being received and investigated?
- Is there evidence of responses being provided to those that have complained?

Practice issues:

In relating to all services provided to the public, and specifically those that may be of a sensitive nature, complaints mechanisms are critical to ensuring the ongoing quality and integrity of services. Their existence is important to users of services, to whom they provide a sense of security. They are also important to referring agencies who may be encouraged to refer more to a programme

that subscribes to minimum standards and that has implemented an effective complaints system. Such systems require active management in that service users need to be informed (usually through multiple sources) about their existence, and how to use them. A programme also needs to establish the systems to investigate and respond to complaints within reasonable time-frames.

Standard No. 32

Relevant reporting to the criminal justice system should be undertaken.

Principles and values to which standard is linked:

Accountability.

Measurable outcomes:

Was required reporting to the criminal justice system completed?

Yes No

For evaluation purpose:

- The organisation or person responsible for the restorative justice process confirms that a report was provided to the relevant criminal justice agency regarding the outcomes of the process.
- The relevant criminal justice agency confirms that a report was provided regarding the outcomes of the process.

Practice issues:

<p>Reporting of this nature is central to building relationships with criminal justice agencies and increasing their interest and trust in restorative justice programmes. Reporting should be prompt, so that statistics can accurately reflect</p>	<p>the number of successfully completed processes. Timeous reporting is also required to ensure that the courts can deal with those matters where agreements were not reached, or where there was a failure to comply with the agreement.</p>
--	---

Standard No. 33

Restorative justice programmes should ensure that any public disclosure about a restorative justice encounter via the media, promotional material, public event or other means is based on informed consent by all the parties and is conducted in a way that is respectful to all parties.

Principles and values to which standard is linked:

Accountability, victim-centredness, fairness, offender reintegration.

Measurable outcomes:

	Yes	No
Were all parties consulted in relation to any public disclosure relating to the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Were all parties informed about the potential consequences of public disclosure?	<input type="checkbox"/>	<input type="checkbox"/>
Did all parties consent to this public disclosure?	<input type="checkbox"/>	<input type="checkbox"/>

For evaluation purpose:

- All parties confirm that they were consulted in relation to any public disclosure relating to a restorative justice encounter.
- All parties confirm that they were informed about the potential consequences of public disclosure.
- All parties confirm that they consented to the public disclosure.

Practice issues:

<p>In the case where it is considered necessary or important to make a public disclosure about a restorative justice encounter, it is necessary that all parties be carefully consulted by those that wish to make this disclosure (e.g. the organisation that undertakes the restorative justice programme or process). The parties need to be thoroughly informed about the potential consequences of public disclosure, and especially</p>	<p>about the fact that once something has been recorded in the media, it becomes a matter of public record and stays there forever. It should also be explained that no-one has control of how the media may choose to interpret or use information. Here, organisations should provide this information and then seek consent for disclosure. It is advisable in these cases to obtain written consent.</p>
---	--

PART 2 **Report**

**Project to Develop Practice Standards for Restorative Justice
that relate to the Criminal Justice System**
– Cheryl Frank and Ann Skelton, September 2007

1 Introduction

The implementation of formalised restorative justice programmes has been a relatively recent advent in South Africa, with the first programmes being introduced in the early 1990s. Since these beginnings, both government agencies and civil society organisations in the country have shown great interest in the opportunities offered by restorative justice and there has been a proliferation of programmes that have the express intention of implementing the principles of restorative justice.⁵ With the development of these programmes has come the concern to ensure the quality of programme delivery and protection of the rights of those that they are intended to benefit.

The project to develop practice standards for restorative justice programmes was commissioned by the Restorative Justice Initiative with funding support from the Danish Embassy. It aims to develop a set of researched and negotiated standards for restorative justice practice in South Africa. The researchers commissioned for the task were expected to review international research in terms of developing draft standards, and to ensure that key government and civil society role-players were consulted on the standards before these were finalised.

At the outset it is necessary to clarify what this project sought to achieve. These standards do not aim to “standardise” restorative justice programmes, with a view to making them similar to each other. More accurately, these standards seek to create a set of benchmarks by which restorative justice programmes may be measured. The measures that these standards establish address themselves to the quality of service provided to the users of the service. They seek to ensure that restorative justice programmes remain within human rights standards, and that they remain true to their restorative justice objectives.

The discussion below provides an overview of the project methodology, followed by a discussion of some of the key issues that provided the framework within which these practice standards for restorative justice were developed. This is followed by a discussion of how the standards were developed, and a description of the central values and principles that informed the development of the standards.

2 Methodology

The project was undertaken in three phases. The first was a review of local and international literature, and the development of a preliminary set of practice standards. A bibliography of the literature consulted is provided at the end of Part 2.

The second phase involved consultation with restorative justice stakeholders. One workshop was held where the preliminary set of practice standards developed in the first phase was presented to restorative justice stakeholders from around South Africa. Participants included representatives from government departments and civil society organisations with an interest or involvement in restorative justice programmes. Thirty-five people attended this workshop.

During this period, the draft standards were also sent out for comment to a number of other stakeholders. These included international experts on restorative justice, local members of the judiciary, and the members of the Child Justice Alliance Driver Group.

5. See Skelton, A and M Batley. (2006) *Charting Progress, Mapping the Future: Restorative Justice in South Africa*, Restorative Justice Centre and the Institute for Security Studies, Pretoria which provides an audit of restorative justice programmes in South Africa.

The comments obtained from the workshop and those obtained from consultations with other individuals were then reviewed, and integrated into a revised set of standards.

Phase 3 involved the finalisation of the revised set of practice standards. This involved a further workshop, involving selected representatives from national government departments and civil society organisations. Seventeen people participated in this workshop which sought to obtain confirmation of the set of practice standards. A list of organisations consulted in the above process is provided at the end of Part 2.

3 Developing Practice Standards for Restorative Justice Programmes

Before presenting the practice standards, it is necessary to clarify several issues that were addressed in developing this set of practice standards.

3.1 The intentions of standards development

Standards development is primarily motivated by the need to ensure the quality of services. In the context of restorative justice, the notion of quality may be unpacked into a range of different considerations. Maintaining human rights standards is one critical area in this regard. Skelton and Frank note the need for standards to protect the “due process” rights of parties within the programme.⁶ One of the areas of specific concern in this regard is to prevent the application of sanctions within restorative justice programme that are more severe than would have been applied in the criminal justice system. Another motivation for standards development is the need to ensure that restorative justice processes are indeed restorative. For Braithwaite, one of the central purposes of standards is to prevent and manage domination and power imbalances within restorative justice interventions.⁷

To guide the development of restorative justice practice standards for South Africa, these motivations for standards development have been distilled into the following central principles.

- The need for restorative justice programmes to operate within a human rights framework and ensure that the rights of all users of these services are upheld
- The need for restorative justice programmes to remain true to their restorative justice values

3.2 What are standards and how should they be expressed?

There is a vast body international literature relation to guiding restorative justice practice. This contains references to values, guiding principles, practice guidelines and standards. All of the above are contained within the discourse of how to secure practice that is ethical, of a high quality and that is consonant with the basic elements of restorative justice theory.

Standards may be distinguished from other things in terms of purpose and application. Firstly, they have the purpose of establishing benchmarks by which actions may be measured and secondly, they are expressed in ways that seek to make them measurable. Standards do, however, emerge from a set of generally accepted principles that reflect philosophy but are also intended to guide practice.

6. Skelton, A, and C Frank, How Does Restorative Justice Address Human Rights and Due Process Issues?, in H Zehr and B Toews (eds). 2004. *Critical Issues in Restorative Justice*, Criminal Justice Press and Willan, Monsey.

7. Braithwaite, J. “Setting Standards for Restorative Justice” (2002) 42 *British Journal of Criminology* 563-577.

The establishment of standards in relation to services is motivated by an interest in ensuring the quality of services, and the protection of those utilising service. Standards development of this nature in criminal justice service delivery is relatively new in South Africa, but there are a few examples of what may be done. These include minimum standards for diversion programmes, minimum standards for the victim empowerment programme, service standards relating to the Victims' Charter. These have been produced at varying degrees of quality.⁸

In their work to develop minimum standards for diversion programmes in South Africa, Muntingh and Ehlers describe minimum standards as:

*The level of performance below which we cannot drop, as this will hold a direct and severe risk for the recipient of the intervention... and compromise the intended outcome of the intervention.*⁹

They describe the purpose of standards as being to manage risks relating to the protection of rights, and to ensure accountability for the provision of services. They state further that standards need to be objective, transparent and verifiable. This is described by others as the need for service standards to be observable and measurable. Muntingh and Ehlers also emphasise that minimum standards need to be tested, and that both their desirability and feasibility need to be examined.

Writing in relation to standards for services to crime victims, Frank notes the ways in which standards are expressed directly affects the extent to which these standards may be considered to be useful. She shows how standards that describe the activities by service providers (e.g. "the crime will be investigated", "they [the police] will respond to your report as quickly as they can")¹⁰ are far less useful than those standards that are expressed in terms of the outcomes that are expected for the beneficiaries of the service.¹¹

3.3 The approach to standards development

While Braithwaite acknowledges the need for standards in relation to restorative justice practice, he cautions that standards that are too prescriptive may stifle innovation. He also notes how standards created by professionals may become of such a nature that they may not make space for traditional practices. He suggests that we seek to develop "open-textured restorative justice standards that allow a lot of space for cultural difference and innovation while giving it a language for denouncing uncontroversially bad practice."¹²

The approach adopted by this project is to develop standards that are broadly applicable to all programmes that seek to implement the principles of restorative justice. The standards are not prescriptive of programme structure, but seek to provide a framework through which the key elements of the programme may be measured. This framework is informed by the two principles noted above, i.e. ensuring that human rights are upheld and ensuring that the 'restorativeness' of programmes is maintained.

8. Frank, C. Victim Policy in South Africa, Institute for Security Studies, forthcoming.

9. L. Muntingh and L. Ehlers, *Report to the Department of Social Development on the Development of Minimum Standards for Diversion Programmes for Children in Conflict with the Law*, Nicro, Cape Town, March 2005.

10. These are examples of service standards stated in: Department of Justice and Constitutional Development. 2004. *Minimum Standards on Services for Victims of Crime in South Africa*. Pretoria: Department of Justice and Constitutional Development.

11. Frank, C, op cit.

12. Braithwaite, J. op cit 565.

3.4 Defining Restorative Justice for the Practice Standards

At the outset, it is necessary to identify which programmes or processes the proposed standards would be applicable to. Many programmes and processes identify themselves as contained in a restorative justice paradigm or as undertaking restorative justice. For the purposes of this exercise, Zehr's definition of restorative justice below was selected as being generally descriptive of the interventions to which these standards would apply.

*Restorative Justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.*¹³

3.5 The Purpose and Application of the Practice Standards for Restorative Justice

The establishment of standards is usually motivated by the need to secure a specific level of quality in relation to a service. These practice standards seek to ensure that restorative justice interventions do two specific things: (1) that they conform to human rights standards, and (2) that interventions stay true to restorative justice principles.

The standards are specifically intended as a tool for practitioners that implement restorative justice programmes and processes aligned with the criminal justice system. Therefore, these standards would specifically apply to: restorative justice interventions relating to diversion from the criminal justice system; restorative justice programmes and processes that relate to sentences; and programmes and processes that take place in the context of correctional institutions.

These standards have not been developed with the idea of regulating all kinds of conflict resolution/dispute resolution processes, as there are significant differences between those processes that are intended to be contained in a restorative justice paradigm and those intended as alternate dispute resolution mechanisms. It should be noted therefore that these standards may not apply to general alternate dispute resolution practices such as mediation, or traditional justice practices. However, it is proposed that these standards may be modified to offer a set of standards that is applicable to these processes.

The standards have been developed to apply to any restorative justice programme or process that relates to the criminal justice system. Here the words, "programme or process" are defined in their broadest form and include processes where, for example, there may not be a face to face encounter between the victim and offender; where someone else may represent the victim, etc. The standards are however, specific to the values, principles and objectives of restorative justice.

4 Identifying Values, Principles and Developing Standards for Restorative Justice Practice

The first phase of this project sought to gather information from local and international literature on standards for restorative justice practice. From this process, it became clear that while some documents identified themselves as offering restorative justice standards (such as that of the Restorative Justice

13. Zehr, H. 2002. *The Little Book of Restorative Justice*. Good Books. Intercourse.

Consortium)¹⁴ these were not written in such a way as to offer the measurability required for this process. Therefore, it was decided that the international literature would be used for the purposes of guiding the development of a list of general principles and values for restorative justice, from which the practice standards would be developed. Here, particularly the work of the Restorative Justice Consortium was invaluable in generating the list of values and principles, and developing standards from these.

The following list of values and principles was established:

- Restorative justice processes should be in keeping with the rule of law, human rights principles and the rights articulated in the South African Constitution.
- All parties should be provided with complete information as to the purpose of the process, their rights within the process and the possible outcomes of the process.
- All restorative justice processes should involve careful preparation of the participants, including legal representatives¹⁵
- Parties should be made aware that they may withdraw from the process at any time¹⁶
- Parties should as far as possible be given time to consider their options, when a restorative justice option is proposed
- Referral to restorative justice processes should be possible at any stage of the criminal justice system, with particular emphasis on pre-trial diversion, plea and sentence agreements, pre-sentence process, as part of the sentence, and part of the reintegration process, including parole
- Participation in restorative justice processes should be voluntary for all parties
- The parties should not be pressured into any specific agreement¹⁷
- Restorative justice processes should provide all parties with equal opportunities for participation.¹⁸
- Restorative justice must promote the dignity of victims and offenders, and there should be no domination or discrimination¹⁹
- Restorative justice processes should be balanced and fair²⁰
- Restorative justice processes should generally be confidential. Parties may make an informed decision, by consensus, to dispense with confidentiality
- Victims and offenders should be allowed to bring support persons to the encounter provided that this does not compromise the rights and safety of any other party.
- Victims and offenders should be allowed access to legal advice at any stage of the proceedings²¹
- Before taking part in a restorative justice process, the offender should have admitted responsibility for the offence²²

14. Restorative Justice Consortium (2004) Standards for Restorative Justice. www.restorativejustice.org.uk

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

19. Braithwaite, J. 2000. op cit.

20. Restorative Justice Consortium. 2004. Standards for Restorative Justice. www.restorativejustice.org.uk

21. Ibid.

22. Ibid.

- The participation of children should be contingent on permission from the parent/guardian as well as his/her presence or the presence of another designated adult whose sole responsibility is towards the protection of the rights of the child.
- When dealing with a child, care should be taken to ensure that s/he understands the process and can participate effectively
- Restorative justice processes should promote healing and restitution
- Restorative justice outcomes should not be disproportionate to the harm caused²³
- Restorative justice processes should aim to prevent future offending.
- Restorative justice programmes should respond to harms, needs and obligations.
- Restorative justice processes should create space for remorse, the expression of shame, apology, forgiveness, mercy and compassion but should not force these responses to occur²⁴
- Involvement in a restorative justice process should not be a cruel, demeaning or degrading experience for any party.
- Restorative justice processes should, as far as possible, be culturally appropriate to the parties involved.
- All those who are responsible for the facilitation of restorative justice processes should be adequately trained or experienced.
- Restorative justice programmes should provide a trained interpreter where this is required.²⁵
- Restorative programmes should be designed in consultation with victims and offenders²⁶
- The need for public safety should be taken into consideration in terms of restorative justice processes and outcomes²⁷
- Restorative justice programmes should have clear aims that are well publicised²⁸
- Restorative justice programmes should provide a basis by which success may be measured²⁹
- Restorative justice programmes should be monitored (through internal processes) and evaluated (through independent research) to promote continuous improvement³⁰
- Restorative justice programmes should have published codes of practice and standards³¹
- Restorative justice programmes should take measures to ensure the safety of participants³²
- Restorative justice programmes and processes should establish and maintain effective complaints mechanisms
- Restorative justice programmes need to ensure that offenders are, as far as possible, in a position to meet the obligations created by the offence.

23. Ibid.

24. Op cit.

25. Ibid.

26. Ibid.

27. Ibid.

28. Ibid.

29. Ibid.

30. Ibid.

31. Ibid.

32. Ibid.

A set of 33 practice standards were developed from this set of values and principles, and are presented in full elsewhere. It should be noted that, for the purposes of informing their practical implementation, each standard has been presented in the following format:

- A standard statement
- The restorative justice values and principles to which that standard relates is noted
- Measurable outcomes checklist:

This is intended to be used by practitioners as the restorative justice programme or process is being implemented. It will allow the practitioner to ensure that each aspect of the restorative justice process has been adequately completed. This checklist is intended to guide the daily practice of practitioners and is completed by the practitioner as the different phases of the restorative justice process are worked through.

- Measures that may be applied for evaluation purposes

These are intended to be used by an organisation to evaluate its practice in relation to restorative justice programmes. An evaluation may be conducted once per year, and could involve the selection of a sample of restorative justice cases. Here, an organisation may apply these measures to provide information as to the general effectiveness of its restorative justice interventions. These measures are different from the 'measurable outcomes checklist' above in that they seek to obtain information from those that have utilised the restorative justice programme, with a view to understanding whether standards were upheld.

- Practice issues

This discussion is provided at the end of each standard and highlights some of the central practice issues relating to that standard. This discussion specifically aims to provide a rationale for the standard and consider its applicability to the victim and offender. It is proposed that this section would be useful in the training of restorative justice practitioners.

5 Recommendations for the Way Forward

At the conclusion of this initiative to develop practice standards for restorative justice programmes relating to the criminal justice system, it is important to note that this should be viewed as the first step in a broader process, rather than an end.

The practice standards that have been developed, whilst widely consulted upon, have not been thoroughly tested in practice settings and it is recommended that this become the focus for taking these standards forward. It is recommended that efforts be made by the Restorative Justice Initiative to obtain general feedback from practitioners relating to the value and utility of the standards, but also to institute a project to specifically assess these issues in selected practice settings.

It is also important to note that this project did not address itself to other settings) where these standards could be applicable, such as in traditional justice processes. It is recommended that work be undertaken with traditional leaders to develop standards for those settings, utilising these standards as a possible starting point.

References Consulted

Bazemore, Gordon and Green, Diane L. (2007). "Yardsticks" for Victim Sensitive Process: Principle-Based Standards for Gauging the Integrity of Restorative Justice Process. *Victims and Offenders*. 2(3):289-301.

Bowen, H. Recent Restorative Justice Developments in New Zealand/Aotearoa. International Bar Association Conference, Durban, 23 October 2002.

Braithwaite, J. "Setting Standards for Restorative Justice" (2002) 42 *British Journal of Criminology* 563-577.

Braithwaite, J "Principles of Restorative Justice" in A von Hirsch, J Roberts, A Bottoms, K Roach and M Schiff (eds) (2003) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford, Hart Publishing.

Criminal Justice System *Best Practice Guidance for Restorative Justice Practitioners*, Home Office, London, December 2994.

Department of Justice and Constitutional Development. (2004) *Minimum Standards on Services for Victims of Crime in South Africa*. Department of Justice and Constitutional Development, Pretoria.

Department of Justice and Constitutional Development. (2004) *Service Charter for Victims of Crime in South Africa*. Department of Justice and Constitutional Development, Pretoria.

Eliaerts, Christian and Dumortier, Els (2002). *Restorative Justice for Children: In Need of Procedural Safeguards and Standards* In, Elmar G.M. Weitekamp and Han-Jurgen Kerner, *Restorative Justice: Theoretical Foundations*. Deon, UK: Willan Publishing. Pp. 204-223.

Frank, C. *Victim Policy in South Africa*, Institute for Security Studies, forthcoming.

Hennessy, Julia and Carter, Ian and Dale, Christine (2001). *Family Group Conference and Young People Who Offend: Practice Standards* Updated by Guy Masters, February 2002. Essex, England: Essex County Council. Downloaded 3 September 2004.

McCold, Paul. Dangers and opportunities of setting standards for RJ practices. Paper presented at the Third Conference of the European Forum for Victim-Offender Mediation and Restorative Justice, "Restorative Justice in Europe: Where are we heading?", Budapest, Hungary, 14-16 October 2004.

Muntingh, L and L Ehlers, Report to the Department of Social Development on the Development of Minimum Standards for Diversion Programmes for Children in Conflict with the Law, NICRO, Cape Town, March 2005.

National Prosecuting Authority of South Africa. Uniform Protocol on Victim Management.

New Zealand Ministry of Justice. Summary of Submissions on Draft Principles of Best Practice for Restorative Justice Processes in the Criminal Court, October 2003.

<http://www.justice.govt.nz/restorative-justice/summary/index.html>

New Zealand Ministry of Justice. Draft Principles of Best Practice for Restorative Justice Processes in the Criminal Court, Discussion Paper.

May 2003, <http://www.justice.govt.nz/restorative-justice/summary/index.html>

Restorative Justice Consortium (2004). *Standards for Restorative Justice*.
<http://www.restorativejustice.org.uk>

Restorative Justice Consortium (December 2004) Principles of Restorative Processes.
<http://www.restorativejustice.org.uk>

Scottish Executive (2005) Restorative Justice Services in the Children's Hearings System, Scottish Executive, Edinburgh.

South African Qualifications Authority. Unit Standards on Restorative Justice, level 6, registration date 2004 and level 3, registration date 2005.

Skelton, Ann (2000). *Standards for Restorative Justice in domestic legislation* Presented at a parallel session of the 10th UN Crime Congress, Vienna, May.

Skelton, A and C Frank, "How Does Restorative Justice Address Human Rights and Due Process Issues?", in H Zehr and B Toews (eds). (2004) *Critical Issues in Restorative Justice*, Criminal Justice Press and Willan Publishing, Monsey.

Skelton, A and M Batley. (2006). *Charting Progress, Mapping the Future: Restorative Justice in South Africa*, Restorative Justice Centre and the Institute for Security Studies, Pretoria.

Tie, W, H Bowen and J Boyack Restorative Justice Standards Discussion Paper (2003) 22 *Restore* 1-2.

United Nations Economic and Social Council. Basic principles on the use of restorative justice programmes in criminal matters. E/cn.15/2002/L.2/Rev.1, 18 April 2002/

Van Ness, D. "Proposed Basic Principles on the Use of Restorative Justice: Recognising the Aims and Limits of Restorative Justice" in A von Hirsch, J Roberts, A Bottoms, K Roach and M Schiff (eds) (2003) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford, Hart Publishing.

Zehr, H (2002). *The Little Book of Restorative Justice*, Intercourse, Good Books.

Government Departments and Organisations Represented at the Consultative Workshops

Department of Justice and Constitutional Development
Department of Correctional Services
Department of Social Development (National)
Department of Social Development (Gauteng)
Department of Social Services (Northern Cape)
National Prosecuting Authority
Legal Aid Board

Centre for Child Law, University of Pretoria
Centre for Conflict Resolution
Centre for Justice and Crime Prevention
Centre for the Study of Violence and Reconciliation
Community Peace Programme
Conquest for Life
Department of Criminology, University of KwaZulu-Natal
Hope Prison Ministry
Independent Projects Trust
Khulisa Services
NICRO
Nigel Justice Centre
Phaphamani Rape Crisis Centre
Prison Fellowship South Africa
Phoenix Zululand
RAPCAN
Restorative Justice Centre
West Rand Justice Centre

PART 3

Practice Standards and Measurable Outcomes Checklist

For Practitioners Implementing Restorative Justice Programmes

This part of the Toolkit is intended for practitioners to use each time that they undertake a restorative justice programme or process.

This document contains the practice standards together with the measurable outcomes checklist. As each step and phase of the restorative justice process is completed, practitioners can assess whether they have completed all the necessary activities to ensure that their activities ensure human rights standards, and that their activities are indeed restorative in nature.

The Referral Phase

Standard No. 1

When a restorative justice programme or process is being considered for a diversion or plea and sentence agreement, the prosecutor must be satisfied that the case against the offender is a prima facie case.

Measurable outcomes:	Yes	No
Has the prosecutor confirmed that there is a prima facie case against the offender?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 2

If restorative justice is to be used as a diversion or plea and sentence agreement, participation in a restorative justice process or programme by an offender must be contingent on that person having acknowledged responsibility for the offence.

Measurable outcomes:	Yes	No
Has the offender acknowledged responsibility for the offence?	<input type="checkbox"/>	<input type="checkbox"/>
Did the prosecutor consider the consistency between the offender's version and the victims/witnesses versions?	<input type="checkbox"/>	<input type="checkbox"/>
Did the offender have sufficient information to make an informed choice? Was s/he:		
Informed about the charge?	<input type="checkbox"/>	<input type="checkbox"/>
Informed of the evidence?	<input type="checkbox"/>	<input type="checkbox"/>
Informed of his/her rights?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 3

The decision to refer a matter to a restorative justice process should not be based on the seriousness of the offence alone, but rather on a review of all factors in the case including offender responsiveness and readiness and the potential benefits to the victim.

Measurable outcomes:	Yes	No
Has an assessment of the offender been undertaken?	<input type="checkbox"/>	<input type="checkbox"/>
Has the prosecutor or presiding officer considered the full range of factors in deciding to refer the matter including:		
The nature of the offence?	<input type="checkbox"/>	<input type="checkbox"/>
The potential benefits to the victim?	<input type="checkbox"/>	<input type="checkbox"/>
The readiness and responsiveness of the offender?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 4

Where the restorative justice process involves a face-to-face encounter with the victim, the victim's informed consent must be sought prior to the option being offered to the offender.

Measurable outcomes:	Yes	No
Is the prosecutor/presiding officer satisfied that the victim is willing to participate in a face-to-face encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Was the victim consulted about participation in the restorative justice programme before offering the option to the offender?	<input type="checkbox"/>	<input type="checkbox"/>
Were the victim's rights explained in a language that s/he could understand?	<input type="checkbox"/>	<input type="checkbox"/>
Were the processes and possible outcomes of the process explained to the victim?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 5

Participation in or information emanating from a restorative justice programme or process shall not be used as evidence in any subsequent legal proceedings in connection with the same or a related offence.

Measurable outcomes:	Yes	No
Has the person referring the matter informed the offender that agreement to participate cannot be used as evidence of admission of guilt in subsequent legal proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
Has the person referring the matter informed the victim that agreement to participate cannot be used as evidence of admission of guilt in subsequent legal proceedings?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 6

Any power imbalances, cultural differences and/or safety issues will be taken into account in the decision to refer a case to a restorative justice process.

Measurable outcomes:	Yes	No
Have power imbalances been considered?	<input type="checkbox"/>	<input type="checkbox"/>
Have safety issues been considered?	<input type="checkbox"/>	<input type="checkbox"/>
Have language issues been considered?	<input type="checkbox"/>	<input type="checkbox"/>
Have cultural diversity issues been considered?	<input type="checkbox"/>	<input type="checkbox"/>

The Preparation Phase

Standard No. 7

The parties and their support persons must be thoroughly prepared for the restorative justice process, which includes the provision of information about their rights and responsibilities within the process.

Measurable outcomes:	Yes	No
Has the restorative justice process been explained to the victim?	<input type="checkbox"/>	<input type="checkbox"/>
Has the victim been informed of his/her rights within the process relating to the following:		
To participate voluntarily?	<input type="checkbox"/>	<input type="checkbox"/>
To obtain legal advice?	<input type="checkbox"/>	<input type="checkbox"/>
Not to be pressured into agreements?	<input type="checkbox"/>	<input type="checkbox"/>
For the process not to be cruel, demeaning degrading or abusive?	<input type="checkbox"/>	<input type="checkbox"/>
The use of information emanating from the process?	<input type="checkbox"/>	<input type="checkbox"/>
The consequences of non-compliance with agreements?	<input type="checkbox"/>	<input type="checkbox"/>
How disclosures of other crimes during the process will be managed?	<input type="checkbox"/>	<input type="checkbox"/>
Has victim been informed about the agreement and what kinds of outcomes may not be agreed?	<input type="checkbox"/>	<input type="checkbox"/>
Have other concerns of the victim been elicited and addressed?	<input type="checkbox"/>	<input type="checkbox"/>
Has the restorative justice process been explained to the offender?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been informed of his/her rights within the process:		
To participate voluntarily?	<input type="checkbox"/>	<input type="checkbox"/>
To obtain legal advice?	<input type="checkbox"/>	<input type="checkbox"/>
Not to be pressured into agreements?	<input type="checkbox"/>	<input type="checkbox"/>
For the process not to be cruel, demeaning or degrading?	<input type="checkbox"/>	<input type="checkbox"/>

The use of information emanating from the process?	<input type="checkbox"/>	<input type="checkbox"/>
The consequences of non-compliance with agreements?	<input type="checkbox"/>	<input type="checkbox"/>
How disclosures of other crimes during the process will be managed?	<input type="checkbox"/>	<input type="checkbox"/>
Have other concerns of the offender been elicited and addressed?	<input type="checkbox"/>	<input type="checkbox"/>
Have relevant support people been informed about the process?	<input type="checkbox"/>	<input type="checkbox"/>
Have relevant support people been informed about the rights of victims and offenders in the process?	<input type="checkbox"/>	<input type="checkbox"/>
Have other concerns of support people been elicited and addressed?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 8

The parties should be informed that they are permitted to withdraw from the process at any stage and opt instead for the case to proceed through the criminal justice process.

Measurable outcomes:	Yes	No
Has the victim been informed that s/he may withdraw from the process at any stage?	<input type="checkbox"/>	<input type="checkbox"/>
Has the victim been informed of the implications of such a decision?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been informed that s/he may withdraw from the process at any stage?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been informed of the implications of such a decision?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 9

The restorative justice encounter should be arranged at a time and place acceptable to all parties.

Measurable outcomes:	Yes	No
Has the victim been consulted regarding the time of the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Has the victim been consulted regarding the place of the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been consulted regarding the time of the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been consulted regarding the place of the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>

The Restorative Justice Encounter

Standard No. 10

At the start of the encounter the facilitator should explain the planned proceedings to all those present. This should include information about the purpose of the meeting and the role of the facilitator.

Measurable outcomes:	Yes	No
Did the facilitator begin by explaining the planned proceedings to all those present?		
Did this include:		
The purpose of the meeting?	<input type="checkbox"/>	<input type="checkbox"/>
The role of the facilitator?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 11

The rights of victims, offenders and others in relation to the restorative justice process should be explained to all those present. The specific rights that should be explained are:

- Victims and offenders are entitled to access legal advice at any stage of the proceedings

Practice Standards and Measurable Outcomes Checklist

- Parties may withdraw from the process at any time
- The victim and offender should again be asked whether they have entered the proceedings voluntarily, and whether they understand the purpose of the process, and the possible outcomes of the process
- The victim is under no obligation to accept any offer of reparation from the offender
- The process should not be a cruel, demeaning or degrading experience for either party. This should apply to all aspects of the process including the agreements reached.
- Participation in or information emanating from a restorative justice process cannot be used in any subsequent legal proceedings
- How the disclosure of other offences would be handled

Measurable outcomes:	Yes	No
Did the facilitator inform all participants of the following rights and principles:		
Victims and offenders are entitled to access legal advice at any stage of the proceedings	<input type="checkbox"/>	<input type="checkbox"/>
Parties may withdraw from the process at any time	<input type="checkbox"/>	<input type="checkbox"/>
The victim and offender should participate in the proceedings voluntarily	<input type="checkbox"/>	<input type="checkbox"/>
The victim is under no obligation to accept any offer of reparation from the offender	<input type="checkbox"/>	<input type="checkbox"/>
The process should not be a cruel, demeaning or degrading experience for either party	<input type="checkbox"/>	<input type="checkbox"/>
How the disclosure of other offences would be handled.	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 12

The nature and substance of possible outcomes and agreements (as an outcome of the restorative justice process) that may be reached should be explained to the participants. This should include:

- Agreements should be entered into voluntarily by all parties
- No party may be pressured into accepting an agreement or any part of an agreement
- No agreement may include requirements that are cruel, demeaning or degrading to either party
- Once an agreement has been reached and agreed to it is binding on the parties
- The consequences of non-compliance with agreements

Measurable outcomes:	Yes	No
Did the facilitator explain the following central principles relating to agreements?		
Agreements should be entered into voluntarily by all parties	<input type="checkbox"/>	<input type="checkbox"/>
No party may be pressured into accepting an agreement or any part of an agreement	<input type="checkbox"/>	<input type="checkbox"/>
No agreement may include requirements that are cruel, demeaning or degrading to either party	<input type="checkbox"/>	<input type="checkbox"/>
Once an agreement has been reached and agreed to it is binding on the parties	<input type="checkbox"/>	<input type="checkbox"/>
The consequences of non-compliance with agreements	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 13

Participants should be informed that the proceedings are confidential. Parties may make an informed decision, by consensus, to dispense with confidentiality.

Measurable outcomes:	Yes	No
Did the facilitator inform the meeting about the confidentiality of the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>
Did the facilitator inform the meeting that confidentiality could be dispensed with if all parties agreed, and if all were fully aware of the consequences?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 14

The participants should be informed of the need to acknowledge and manage power imbalances that may result due to issues such as gender, race, age, economic disparities, etc. in the proceedings.

Measurable outcomes:	Yes	No
Did the facilitator inform the participants of the need to acknowledge and manage power imbalances that may exist?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 15

The facilitation of the process should provide all parties with opportunities for participation.

Measurable outcomes:	Yes	No
Did the facilitator make efforts to enable the participation of those who wished to be heard?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 16

The process should expressly acknowledge the harm caused to the victim.

Measurable outcomes:	Yes	No
Did the facilitator ensure that the specific harm caused to the victim was acknowledged?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 17

The process should recognise and enable the fulfilment of the needs of victims such as the need for the acknowledgement and vindication, the need for answers, and the need for compensation.

Measurable outcomes:	Yes	No
Did the facilitator allow the opportunity for the victim to express his/her needs emerging from the offence?	<input type="checkbox"/>	<input type="checkbox"/>
Did the facilitator seek out ways to respond to these needs?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 18

The process should respect the experiences and feelings of offenders.

Measurable outcomes:	Yes	No
Did the facilitator ensure that the feelings and experiences of offenders were heard and acknowledged?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 19

Offenders should be afforded the opportunity to respond to the obligations created by the offence, including offering reparation.

Measurable outcomes:	Yes	No
Did the facilitator ensure that the offender had been provided with opportunities to respond to the obligations created by the offence?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 20

The process should not be a cruel, demeaning or degrading experience for either party.

Measurable outcomes:	Yes	No
Did the facilitator make efforts to ensure that the process was not cruel, demeaning or degrading to any party?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 21

Agreements in restorative justice processes should be entered into voluntarily.

Measurable outcomes:	Yes	No
Did the facilitator ensure that the victim entered into the agreement voluntarily, and stop efforts to coerce him/her into any agreement?	<input type="checkbox"/>	<input type="checkbox"/>
Did the facilitator ensure that the offender entered into the agreement voluntarily, and stop efforts to coerce him/her into any agreement?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 22

Agreements should be reasonable and achievable.

Measurable outcomes:	Yes	No
Did the facilitator ensure that the agreement is reasonable and achievable by checking this with the affected parties?	<input type="checkbox"/>	<input type="checkbox"/>
Did the facilitator check that the relevant resources to enable fulfilment of the agreement were available in the community?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 23

The nature of reparation should not be disproportionate to the harm caused.

Measurable outcomes:	Yes	No
Did the facilitator ensure that the nature of reparation contained in the agreement is not disproportionate to the harm caused?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 24

Restorative justice agreements should seek to provide a balance between meeting the needs of the victim and promoting offender reintegration.

Measurable outcomes:	Yes	No
Did the facilitator provide guidance to ensure that the agreement was balanced between meeting the needs of the victim and promoting offender reintegration?	<input type="checkbox"/>	<input type="checkbox"/>

The Post-Encounter Phase

Standard No. 25

The terms of agreement should be provided in writing. This should include: the names of the parties, the specific elements of the agreement, the time-frames, and a description of what will occur if there is a failure to comply.

Measurable outcomes:	Yes	No
Was there a written agreement?	<input type="checkbox"/>	<input type="checkbox"/>
Did the agreement contain the names of the parties?	<input type="checkbox"/>	<input type="checkbox"/>
Did the agreement set out the specific elements of the agreement, with time frames?	<input type="checkbox"/>	<input type="checkbox"/>
Did the agreement clearly indicate what would occur if there was a failure to comply?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 26

Restorative justice programmes need to provide both parties with the written terms of agreement, as soon as possible but not later than one week after the restorative justice encounter.

Measurable outcomes:	Yes	No
Did the restorative justice programme provide the victim with a written copy of the agreement not later than 1 week after the encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Did the restorative justice programme provide the offender with a written copy of the agreement not later than 1 week after the encounter?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 27

Both parties should be informed about the consequences of failing to comply with the conditions of the agreement.

Measurable outcomes:	Yes	No
Did the restorative justice programme inform the offender of the consequences of the failure to comply with the conditions of the agreement?	<input type="checkbox"/>	<input type="checkbox"/>
Did the restorative justice programme inform the victim of the consequences of the failure to comply with the conditions of the agreement?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 28

Restorative justice programmes must take steps to effectively monitor compliance with agreements.

Measurable outcomes:	Yes	No
Were steps taken to ensure that the agreement was complied with?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 29

All restorative justice programmes should have a documented procedure for responding to non-compliance with agreements, and provide information to victims and offenders about this procedure.

Measurable outcomes:	Yes	No
Does the restorative justice programme have a documented procedure for responding to non-compliance with agreements	<input type="checkbox"/>	<input type="checkbox"/>

Practice Standards and Measurable Outcomes Checklist

Has the victim been informed of the procedure?	<input type="checkbox"/>	<input type="checkbox"/>
Has the offender been informed of the procedure?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 30

Restorative justice programmes have the duty to assess the extent to which both victims and offenders have been satisfied by the process.

Measurable outcomes:	Yes	No
Was the satisfaction of the victim and offender with the restorative justice process assessed?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 31

Restorative justice programme have a duty to establish and administer mechanisms through which programme participants may complain about services.

Measurable outcomes:	Yes	No
Does the programme have a complaints mechanism?	<input type="checkbox"/>	<input type="checkbox"/>
Have participants been informed about how it can be used?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 32

Relevant reporting to the criminal justice system should be undertaken.

Measurable outcomes:	Yes	No
Was required reporting to the criminal justice system completed?	<input type="checkbox"/>	<input type="checkbox"/>

Standard No. 33

Restorative justice programmes should ensure that any public disclosure about a restorative justice encounter via the media, promotional material, public event or other means is based on informed consent by all the parties and is conducted in a way that is respectful to all parties.

Measurable outcomes:	Yes	No
Were all parties consulted in relation to any public disclosure relating to the restorative justice encounter?	<input type="checkbox"/>	<input type="checkbox"/>
Were all parties informed about the potential consequences of public disclosure?	<input type="checkbox"/>	<input type="checkbox"/>
Did all parties consent to this public disclosure?	<input type="checkbox"/>	<input type="checkbox"/>

PART 4

Measures for Evaluation Purposes

For Organisations Implementing Evaluations of their Restorative Justice Programmes

This part of the Toolkit is intended to be used when an organisation wishes to evaluate its work relating to its restorative justice interventions. This tool includes each of the practice standards, and provides guidelines on how each of these may be measured. It is anticipated that evaluations may be undertaken on a periodic basis (e.g. once per year) and that organisations can do this by drawing a sample of cases and applying these measures to those cases. Where an external evaluator is contracted to undertake an evaluation, this tool may be provided to the evaluator to guide the process.

The Referral Phase

Standard No. 1

When a restorative justice programme or process is being considered for a diversion or plea and sentence agreement, the prosecutor must be satisfied that the case against the offender is a prima facie case.

For evaluation purpose:

- The prosecutor confirms that s/he considered whether there was a prima facie case by relying on statements in the docket and weighing up the evidence.

Standard No. 2

If restorative justice is to be used as a diversion or plea and sentence agreement, participation in a restorative justice process or programme by an offender must be contingent on that person having acknowledged responsibility for the offence.

For evaluation purpose:

- The prosecutor confirms s/he explained the rights of the offender to him/her in language that the offender could understand.
- The prosecutor confirms that the offender was given a summary of the evidence against him/her.
- The prosecutor confirms that the offender made an informed choice, which was not brought about by undue influence from any person.
- The prosecutor confirms that the offender was told what the charge was in language s/he could understand.
- The prosecutor confirms that s/he considered whether the acknowledgement of responsibility was reasonably consistent with the events described by victims and witnesses.
- The offender confirms that his/her rights were explained in language s/he could understand.
- The offender confirms that s/he made an informed choice which was not unduly influenced by any person.
- The offender confirms that s/he was informed about the charge together with a summary of evidence, and s/he was therefore able to make an informed choice.

Standard No. 3

The decision to refer a matter to a restorative justice process should not be based on the seriousness of the offence alone, but rather on a review of all factors in the case including offender responsiveness and readiness and the potential benefits to the victim.

For evaluation purpose:

- The probation officer or other suitably experienced person confirms that an assessment of the offender was undertaken to determine whether s/he is a suitable candidate for the restorative justice process.
- The person referring the case confirms that s/he considered at least the following when making the referral: the potential benefits to the victim, the nature of the offence and the readiness and responsiveness of the offender, based on an assessment report

Standard No. 4

Where the restorative justice process involves a face-to-face encounter with the victim, the victim's informed consent must be sought prior to the option being offered to the offender.

For evaluation purpose:

- The victim confirms that s/he was approached by a suitably experienced, trained or qualified person prior to the offender being given the option of a restorative justice process involving a face-to-face encounter.
- The victim confirms that his/her rights were explained to him/her in a language s/he understood
- The victim confirms that the restorative justice process and the possible outcomes were also explained.
- The victim confirms that s/he consented to the restorative justice process proceeding.

Standard No. 5

Participation in or information emanating from a restorative justice programme or process shall not be used as evidence in any subsequent legal proceedings in connection with the same or a related offence.

For evaluation purpose:

- The offender confirms that it was explained to him/her that participation in a restorative justice process does not prejudice the presumption of innocence, and cannot be used as evidence of admission of guilt in any subsequent legal proceedings in connection with the same offence.
- The victim confirms that it was explained to him/her that if the restorative justice process fails s/he may have to testify at a future trial.

Standard No. 6

Any power imbalances, cultural differences and/or safety issues will be taken into account in the decision to refer a case to a restorative justice process.

For evaluation purpose:

- It is confirmed by the person making a decision to refer the matter that s/he had taken into account power imbalances, cultural differences and/or safety issues relating to gender, race, age, economic disparities, etc.
- The person making the decision to refer should explain any plans or arrangements made to deal with above.

The Preparation Phase

Standard No. 7

The parties and their support persons must be thoroughly prepared for the restorative justice process, which includes the provision of information about their rights and responsibilities within the process.

For evaluation purpose:

- The victim confirms that s/he was informed about what the process would entail, including information about the facilitator, the rules of the process, how agreements are reached, and the kind of measures that may and may not be included in such agreements.
- The victim confirms that s/he was informed of the following rights within the process:
 - To participate voluntarily
 - To obtain legal advice at any point in the proceedings
 - Not to be pressured into agreements
 - For the process not to be cruel, demeaning or degrading
 - The use of information emanating from the proceedings

- How disclosures of other crimes during the process will be managed
- The consequences of non-compliance with agreements
- The victim confirms that his/her other questions relating to the restorative justice process were elicited and addressed
- The offender confirms that s/he was informed about what the process would entail including information about the facilitator, the rules of the process, how agreements are reached, and the kind of measures that may and may not be included in such agreements.
- The offender confirms that s/he was informed of the following rights within the process:
 - To participate voluntarily
 - To obtain legal advice at any point in the proceedings
 - Not to be pressured into agreements
 - For the process not to be cruel, demeaning or degrading
 - The use of information emanating from the proceedings
 - How disclosures of other crimes during the process will be managed
 - The consequences of non-compliance with agreements
- The offender confirms that his/her other questions relating to the restorative justice process were elicited and addressed.
- Support persons confirm that they were informed about what the process would entail.
- Support persons confirm that she/he/they were informed of the rights of victims and offenders within the process.
- Support persons confirm that their other questions relating to the restorative justice process were elicited and addressed.

Standard No. 8

The parties should be informed that they are permitted to withdraw from the process at any stage and opt instead for the case to proceed through the criminal justice process.

For evaluation purpose:

- The victim confirms that it was explained to him/her that s/he could withdraw at any stage and opt for the matter to proceed through the criminal justice process
- The victim confirms that s/he was informed of the implications of such a decision
- The offender confirms that it was explained to him/her that s/he could withdraw at any stage and opt to have the matter to proceed through the criminal justice process
- The offender confirms that s/he was informed of the implications of such a decision

Standard No. 9

The restorative justice encounter should be arranged at a time and place acceptable to all parties.

For evaluation purpose:

- The victim confirms that s/he was consulted about the time and place of the restorative justice encounter
- The victim confirms that s/he was satisfied with the time and place
- The victim confirms that his/her needs for confidentiality and safety were met.
- The offender confirms that s/he was consulted about the time and place of the restorative justice encounter
- The offender confirms that s/he was satisfied with the time and place.

The Restorative Justice Encounter

Standard No. 10

At the start of the encounter the facilitator should explain the planned proceedings to all those present. This should include information about the purpose of the meeting and the role of the facilitator.

For evaluation purpose:

- Participants confirm that the planned proceedings were explained by the facilitator at the start of the restorative justice encounter.
- Participants confirm that the purpose of the meeting and the role of the facilitator were communicated

Standard No. 11

The rights of victims, offenders and others in relation to the restorative justice process should be explained to all those present. The specific rights that should be explained are:

- Victims and offenders are entitled to access legal advice at any stage of the proceedings
- Parties may withdraw from the process at any time
- The victim and offender should again be asked whether they have entered the proceedings voluntarily, and whether they understand the purpose of the process, and the possible outcomes of the process
- The victim is under no obligation to accept any offer of reparation from the offender
- The process should not be a cruel, demeaning or degrading experience for either party. This should apply to all aspects of the process including the agreements reached.
- Participation in or information emanating from a restorative justice process cannot be used in any subsequent legal proceedings
- How the disclosure of other offences would be handled

For evaluation purpose:

- The participants confirm that the facilitator informed the meeting of the following rights and principles.
 - Victims and offenders are entitled to access legal advice at any stage of the proceedings
 - Parties may withdraw from the process at any time
 - The victim and offender should again be asked whether they have entered the proceedings voluntarily, and whether they understand the purpose of the process, and the possible outcomes of the process
 - The victim is under no obligation to accept any offer of reparation from the offender
 - The process should not be a cruel, demeaning or degrading experience for either party.
 - Participation in or information emanating from a restorative justice process cannot be used in any subsequent legal proceedings.
 - How the disclosure of other offences would be handled.

Standard No. 12

The nature and substance of possible outcomes and agreements (as an outcome of the restorative justice process) that may be reached should be explained to the participants. This should include:

- Agreements should be entered into voluntarily by all parties
- No party may be pressured into accepting an agreement or any part of an agreement

- No agreement may include requirements that are cruel, demeaning or degrading to either party
- Once an agreement has been reached and agreed to it is binding on the parties
- The consequences of non-compliance with agreements

For evaluation purpose:

- The participants confirm that the facilitator explained the following central principles relating to agreements:
 - Agreements should be entered into voluntarily by all parties
 - No party may be pressured into accepting an agreement or any part of an agreement
 - No agreement may include requirements that are cruel, demeaning or degrading to either party
 - Once an agreement has been reached and agreed to it is binding on the parties
 - The consequences of non-compliance with agreements

Standard No. 13

Participants should be informed that the proceedings are confidential. Parties may make an informed decision, by consensus, to dispense with confidentiality.

For evaluation purpose:

- The participants confirm that the facilitator informed the meeting of the confidentiality of the proceedings
- The participants confirm that the facilitator informed the meeting that confidentiality could be dispensed with if all parties agreed, and if all were fully aware of the consequences.

Standard No. 14

The participants should be informed of the need to acknowledge and manage power imbalances that may result due to issues such as gender, race, age, economic disparities, etc. in the proceedings.

For evaluation purpose:

- Participants confirm that the facilitator informed participants of the need to acknowledge and manage power imbalances that may exist due to issues such as gender, race, age, economic disparities, etc. in the proceedings

Standard No. 15

The facilitation of the process should provide all parties with opportunities for participation.

For evaluation purpose:

- The victim confirms that s/he was given opportunities to participate in the proceedings.
- The offender confirms that s/he was given opportunities to participate in the proceedings.
- Other participants confirm that they were given opportunities to participate in the proceedings.
- Evaluation may also measure the extent to which participants were satisfied with their levels of participation.

Standard No. 16

The process should expressly acknowledge the harm caused to the victim.

For evaluation purpose:

- The victim confirms that the harm caused to him/her was acknowledged

Standard No. 17

The process should recognise and enable the fulfilment of the needs of victims such as the need for the acknowledgement and vindication, the need for answers, and the need for compensation.

For evaluation purpose:

- The victim confirms that s/he was allowed the opportunity to express his/her needs resulting from the offence.
- The victim confirms that the restorative justice process responded to some or all of the needs expressed.

Standard No. 18

The process should respect the experiences and feelings of offenders.

For evaluation purpose:

- The offender confirms that s/he was provided with the opportunity to express his/her feelings and experiences.
- The offender confirms that the facilitator made efforts to ensure that these were acknowledged within the process.

Standard No. 19

Offenders should be afforded the opportunity to respond to the obligations created by the offence, including offering reparation.

For evaluation purpose:

- The offender confirms that s/he was provided with opportunities to respond to the obligations created by the offence

Standard No. 20

The process should not be a cruel, demeaning or degrading experience for either party.

For evaluation purpose:

- The victim confirms that the facilitator made every effort to ensure that the process was not cruel, demeaning or degrading to him/her or other persons
- The offender confirms that the facilitator made every effort to ensure that the process was not cruel, demeaning or degrading to him/her or other persons

Standard No. 21

Agreements in restorative justice processes should be entered into voluntarily.

For evaluation purpose:

- The victim confirms that s/he entered into the agreement voluntarily
- The offender confirms that s/he entered into the agreement voluntarily

Standard No. 22

Agreements should be reasonable and achievable.

For evaluation purpose:

- The victim confirms that the requirements of him/her (if any) were reasonable and achievable.
- The offender confirms that the requirements of him/her were reasonable and achievable.
- There is independent confirmation that other community services required for the fulfilment of the agreement were available and accessible.

Standard No. 23

The nature of reparation should not be disproportionate to the harm caused.

For evaluation purpose:

- The offender confirms that the nature and duration of reparation contained in the agreement was not excessive in proportion to the harm caused.
- Support persons confirm that the nature and duration of reparation contained in the agreement was not excessive in proportion to the harm caused.

Standard No. 24

Restorative justice agreements should seek to provide a balance between meeting the needs of the victim and promoting offender reintegration.

For evaluation purpose:

- The victim confirms that the agreement provided a balance between meeting his/her needs and promoting offender reintegration.
- The offender confirms that the agreement provided a balance between meeting the needs of the victim and promoting his/her reintegration.
- An independent assessment of the agreement indicates that it included provisions relating to both meeting the needs of victims and promoting offender reintegration.

The Post-Encounter Phase

Standard No. 25

The terms of agreement should be provided in writing. This should include: the names of the parties, the specific elements of the agreement, the time-frames, and a description of what will occur if there is a failure to comply.

For evaluation purpose:

- The facilitator confirms that a written agreement was drawn up immediately following the encounter.
- The written agreement is available for scrutiny that includes the names of the parties, the specific elements of the agreement, and related time-frames.
- The written agreement clearly sets out what will occur should there be a failure of compliance with the agreement.

Standard No. 26

Restorative justice programmes need to provide both parties with the written terms of agreement, as soon as possible but not later than one week after the restorative justice encounter.

For evaluation purpose:

- The victim confirms that s/he received a written copy of the agreement not later than 1 week after the encounter.
- The offender confirms that s/he received a written copy of the agreement not later than 1 week after the encounter.

Standard No. 27

Both parties should be informed about the consequences of failing to comply with the conditions of the agreement.

For evaluation purpose:

- The offender confirms that s/he was informed about the consequences of the failure to comply with the conditions of the agreement.
- The victim confirms that s/he was informed about the consequences of the failure to comply with the conditions of the agreement.

Standard No. 28

Restorative justice programmes must take steps to effectively monitor compliance with agreements.

For evaluation purpose:

- What steps were taken to ensure that the agreement was complied with after the restorative justice encounter?

Standard No. 29

All restorative justice programmes should have a documented procedure for responding to non-compliance with agreements, and provide information to victims and offenders about this procedure.

For evaluation purpose:

- There is evidence of a documented procedure for responding to non-compliance with agreements
- The victim confirms that s/he was informed of the procedure
- The offender confirms that s/he was informed of the procedure

Standard No. 30

Restorative justice programmes have the duty to assess the extent to which both victims and offenders have been satisfied by the process.

For evaluation purpose:

- Does the programme or organisation make regular efforts to assess the extent to which parties were satisfied with the process?
- Questions relating to “satisfaction” with the process may be added to several of the sections above.

Standard No. 31

Restorative justice programme have a duty to establish and administer mechanisms through which programme participants may complain about services.

For evaluation purpose:

- Does the programme have a functional complaints mechanism?
- Is there evidence of complaints being received and investigated?
- Is there evidence of responses being provided to those that have complained?

Standard No. 32

Relevant reporting to the criminal justice system should be undertaken.

For evaluation purpose:

- The organisation or person responsible for the restorative justice process confirms that a report was provided to the relevant criminal justice agency regarding the outcomes of the process.
- The relevant criminal justice agency confirms that a report was provided regarding the outcomes of the process.

Standard No. 33

Restorative justice programmes should ensure that any public disclosure about a restorative justice encounter via the media, promotional material, public event or other means is based on informed consent by all the parties and is conducted in a way that is respectful to all parties.

For evaluation purpose:

- All parties confirm that they were consulted in relation to any public disclosure relating to a restorative justice encounter.
- All parties confirm that they were informed about the potential consequences of public disclosure.
- All parties confirm that they consented to the public disclosure.

About the Restorative Justice Initiative (RJI)

The Restorative Justice Initiative (RJI) is a network of non-governmental organisations, community-based organisations and individuals who practice and provide services in the field of restorative justice. RJI was initiated by a consortium of NGOs in 1999 and developed out of a Victim Offender Conference (VOC) project which provided a face-to-face mediated interaction between victims and offenders and their families. This project operated as a pilot for one year, after which it was extended for two subsequent years. RJI is currently housed by Restorative Justice Centre (RJC) in Pretoria. The RJI currently undertakes advocacy and training in relation to restorative justice.

Members of the RJI

Centre for the Study of Violence and Reconciliation
Centre for Conflict Resolution
Choose Life Community Development
Community Action Towards A Safer Environment (CASE)
Former Convicted Development Initiative (FOCODI)
Hope Prison Ministry
Khulisa Services
Kubonakele Human Rights, Democracy and Justice Centre
Lotsha Ministries Trust
Masiphathisane Women's Support Centre
Men for Change Eastern Cape
Nakisani Peace Human and Anti-Racism Institute
National Peace Accord Trust
Nigel Justice Centre
ODI Community Law Centre
Phaphama Initiatives
Phaphamani Rape Crisis Centre
Prison Fellowship South Africa
Phoenix Zululand
Restorative Justice Centre
Transkei Restorative Justice Organisation
Tshwane Leadership Foundation
Together Action Group (TAG)
West Rand Justice Centre
Youth Development Outreach (YDO)

Contact the RJI

Tel: 012 323 2926 | Fax: 012 323 6366 | Email: rji@rjc.co.za



MINISTRY OF FOREIGN AFFAIRS OF DENMARK
Danida